

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017005
Case Name	James Nicholas v. Metro East Industries
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0001
Number of Pages of Decision	45
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Keefe, Jr.

DATE FILED: 1/2/2026

/s/ Kathryn Doerries, Commissioner

Signature

DISSENT

/s/ Amylee Simonovich, Commissioner

Signature

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STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES NICHOLAS,

Petitioner,

vs.

NO: 22 WC 17005

METRA EAST,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, and prospective medical, 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 views the evidence differently than the Arbitrator and, therefore, reverses the Arbitrator's Conclusions of Law regarding Issues (C) and (F) in relation to the cervical spine, and modifies the Arbitrator's decision regarding Issues (J) and (K), as set forth below.

Regarding Issues (C) and (F), the Commission reverses the Arbitrator's findings that Petitioner sustained a repetitive trauma injury to the cervical spine and reverses the finding that the cervical spine condition is causally related to the work accident of June 24, 2022.

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Regarding Issue (J), the Commission finds a portion of the treatment rendered at Multicare Specialists was medically unnecessary and unreasonable and therefore modifies the award regarding the medical expenses incurred with this provider. The Commission also denies medical benefits related to the cervical spine.

Regarding Issue (K), having found Petitioner did not establish a repetitive trauma injury to the cervical spine, the Commission reverses the award for prospective medical care related to the cervical spine.

Issues (C) and (F): Did an accident occur that arose out of and in the course of employment by Respondent, and is Petitioner's current condition of ill-being causally related to the accident?

In repetitive trauma cases, the issues of accident and causation are intertwined with both issues resolved together. *Boettcher vs. Spectrum Property Group*, 99 IIC 0961; 1999 Ill. Wrk. Comp. LEXIS 409; *Simpson vs. State of Illinois Department of Human Services*, 18 IWCC 255; 2018 Ill. Wrk. Comp. LEXIS 108. Claimants alleging injury based on repetitive trauma must still meet the same standard of proof as in claims involving a single traumatic accident. *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209, 614 N.E. 177 (1993). There must be a showing that the disabling injury or condition was related to the employment and not the result of a normal degenerative process. *Peoria County Bellwood Nursing Home vs. Industrial Commission*, 115 Ill. 2d at 530 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209 (1993).

Petitioner testified he had been employed with Respondent from October 2014 through June 2022. (T. 10-11) As described in the Arbitrator's findings of fact, Petitioner's employment activities fell within the heavy physical demand level and involved lifting, working with his arms above shoulder level, working with impact tools, and frequent twisting of the head and back. Petitioner's who is right-hand dominant, previously injured his right shoulder and underwent surgery. Petitioner testified he returned to work and compensated for his weakened right shoulder with greater reliance on his left upper extremity. (T. 15) Petitioner testified that in June of 2022 he developed bilateral shoulder pain and low back pain. (T. 15)

Petitioner reported his low back and bilateral shoulder problems to Respondent on June 24, 2022. Respondent sent Petitioner to Midwest Occupational Medicine. Petitioner testified he underwent drug testing which came back positive for marijuana. Petitioner testified this resulted in his employment termination and later acknowledged there was a zero tolerance policy by virtue of Respondent being a federally regulated entity through the railroads. (T. 35) Petitioner did not return to work after June 24, 2022.

On June 24, 2022, Petitioner presented to Midwest Occupational Medicine with complaints of pain in both shoulders and low back for the past several months, with no specific precipitating

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injury. Petitioner completed a pain diagram on which he indicated symptoms involving the front of both shoulders, left upper arm pain, the back of the left shoulder, and the right lower back going down the right buttock. Petitioner did not report any neck pain on the pain diagram. (PX2 at 1)

On June 30, 2022, Petitioner sought treatment at Multicare Specialists for bilateral shoulder and lumbar pain where he was evaluated by a chiropractor, Dr. Eavenson. Per the handwritten History and Physical, Petitioner reported left shoulder pain and lumbar pain and had been off work since Friday due to inability to lift. (PX3 at 1) Petitioner further reported he injured his right shoulder in 2018 or 2019 and had rotator cuff surgery. Petitioner reported his right shoulder was now hurting again and he was working more with his left shoulder. Petitioner also reported that his right lower back started hurting when his left shoulder started hurting. *Id.* Per the typed office visit note, Petitioner complained of bilateral shoulder pain and low back pain “which began in March 2021.” (PX3 at 2) Dr. Eavenson noted Petitioner performed a lot of repetitive work. Petitioner reported he was unable to lift at work and felt pain all day. There was no reported history of neck complaints. X-rays were obtained for the lumbar spine and shoulders. No x-rays were ordered for the cervical spine. Dr. Eavenson ordered MRI studies of the lumbar spine and shoulders.

Petitioner commenced physical therapy at Multicare Specialists on June 30, 2022, and attended therapy with Corey Voss, PT, two to three times a week. At each therapy session, Dr. Eavenson also saw Petitioner for discussion of Petitioner’s complaints and progress. Occasionally, a different chiropractor, Dr. Brooks, saw Petitioner in place of Dr. Eavenson during the therapy sessions. The treatment records noted no lasting improvement. Petitioner continued receiving therapy and seeing a chiropractor at Multicare Specialists through February 6, 2025. Multicare Specialists submitted a bill totaling \$211,045.00. While under the care of Multicare Specialists, Petitioner received referrals for treatment with Dr. Bradley regarding the shoulders and with Dr. Gornet regarding the lumbar spine.

On July 13, 2022, Petitioner underwent an MRI of the lumbar spine, an MR arthrogram of the right shoulder, and a non-contrast MRI of the left shoulder. (PX4) On July 18, 2022, Dr. Eavenson reviewed the results from the MRIs and noted Petitioner had protrusions at L4-L5 and L5-S1 with extruded disc fragment and annular tear at L5-S1. The non-contrast MRI of the left shoulder showed posterior supraspinatus and anterior infraspinatus enthesopathic changes without evidence of tear. The left shoulder also had AC joint arthropathy with marrow edema on both sides of the joint, and undersurface hypertrophy resulting in a mild impingement. The MR arthrogram of the right shoulder showed biceps pathology, enthesopathic changes to the supraspinatus and infraspinatus tendons without evidence of tear, and post-operative changes involving the superior labrum with recurrent undersurface spurring or impingement. (PX3 at 14) Dr. Eavenson referred Petitioner to Dr. Matthew Gornet for evaluation of the lumbar spine. (PX3 at 15)

On July 27, 2022, Petitioner presented to Dr. Gornet with complaints of low back pain and right buttock pain extending to the right upper thigh. (PX5 at 1) Petitioner also complained of bilateral shoulder pain, left worse than right, and occasional tingling in his fingertips. Petitioner

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also completed a pain diagram on which he indicated pain in both shoulders and the right lower back. Petitioner did not report any neck pain on the diagram. (PX5 at 6) Dr. Gornet obtained x-rays of the lumbar spine along with x-rays of the cervical spine. For the cervical spine, the x-rays showed “well-preserved disc height with no evidence of any significant degeneration” and there was no evidence of instability on flexion/extension views. (PX5 at 2) Dr. Gornet prescribed medications and issued light duty work restrictions. Dr. Gornet opined Petitioner’s employment aggravated underlying disc pathology in the lumbar spine and recommended epidural steroid injections. Dr. Gornet further indicated a discogram would be considered if there was no improvement. Dr. Gornet noted his “working diagnosis” was discogenic pain at L4-L5 and L5-S1. There were no documented neck complaints and no discussion regarding any symptomatic condition involving the cervical spine.

As mentioned, Petitioner attended physical therapy at MultiCare Specialists. There were no reported neck complaints in August or September of 2022. (PX3) On September 8, 2022, Petitioner complained of ongoing left shoulder pain with some numbness in the left arm but he denied neck pain. (PX3 at 37) Dr. Eavenson noted her examination of the cervical spine was unremarkable. On September 19, 2022, Petitioner reported he slept on his left arm and it felt numb when he woke up. (PX3 at 45) Petitioner again denied neck pain. *Id.* Dr. Eavenson continued to note that examination of the cervical spine was unremarkable. *Id.* Dr. Priebe, a family medicine physician at Multicare Specialists, administered a steroid injection into Petitioner’s left shoulder. On September 26, 2022, Dr. Eavenson referred Petitioner to Dr. Bradley for the left shoulder. (PX3 at 49)

On November 7, 2022, Petitioner presented Dr. Matthew Bradley for shoulder evaluation. (PX6 at 1) Dr. Bradley noted Petitioner had an almost three-year history of increasing left shoulder pain and Petitioner pointed to the anterior lateral aspect of the shoulder as the location of his pain. *Id.* Petitioner also reported increased left shoulder pain associated with elevation of the arm “above the horizon and across chest type of work.” *Id.* There was no documented history of prior neck complaints or current neck complaints. Dr. Bradley obtained x-rays of the left shoulder and reviewed the recent MRI study. Dr. Bradley noted the MRI clearly showed edema on both sides of the AC joint. Regarding the recent shoulder injection, Dr. Bradley commented that the lack of relief from the injection was not unexpected given the location of his pathology being the AC joint. (PX6 at 2) Dr. Bradley also noted, “I am able to *reproduce all of his symptoms* with cross chest testing of his AC joint.” (Emphasis added.) *Id.* Dr. Bradley opined the Petitioner’s employment contributed to the development of AC joint disease and recommended surgery in the form of an arthroscopic subacromial decompression with distal clavicle excision. (Px. 6 at 1-2).

Petitioner continued with therapy at MultiCare Specialists in November and December of 2022 and January of 2023. On January 12, 2023, Corey Voss noted that Petitioner reported having no improvement with his “neck and back pain.” (PX3 at 138) This appears to be the first documented reference to the neck, about 6 months after the accident date.

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On February 13, 2023, Petitioner returned to Dr. Gornet with complaints of low back pain and right buttock pain into the right hip. Petitioner also complained of bilateral shoulder pain with tingling. Dr. Gornet commented he had recommended epidural injections at L4-L5 and L5-S1 when Petitioner was last seen in July 2022 and reiterated that further treatment would depend on whether those injections fail. Dr. Gornet further noted, "He is still having neck pain, but we have placed it on hold." (PX5 at 7)

On March 14, 2023, Petitioner underwent a right epidural steroid injection at L4-L5 with Dr. Blake. (PX7 at 1) On April 11, 2023, Petitioner underwent an epidural steroid injection at the L5-S1 level with Dr. Blake. (PX7 at 3) During the interval between the two lumbar injections, Petitioner returned to Dr. Eavenson at Multicare Specialists on March 20, 2023, with continuing shoulder pain and low back pain along with pain across the mid-back. There was no recorded complaint for neck pain; however, Dr. Eavenson noted Petitioner had neck pain during active neck flexion and extension. (PX5 at 190)

At Respondent's request, Dr. George Paletta examined Petitioner on June 6, 2023, for evaluation of the left shoulder. During the examination, Dr. Paletta noted the cervical spine was normal with "unrestricted, pain free range of motion." (PX13, deposition exhibit 2) Dr. Paletta diagnosed AC joint pain secondary to AC joint arthropathy with inflammatory response and distal clavicle edema, which in his opinion were not caused by Petitioner's work activities. Due to the passage of time since the MRI of the left shoulder had been obtained, he recommended a new MRI along with diagnostic injections. If the injection of the AC joint provided dramatic pain relief, then a distal clavicle excision would be reasonable.

On June 12, 2023, the parties deposed Dr. Gornet. (PX12) Dr. Gornet testified his working diagnosis was discogenic pain secondary to structural disc pathology at L4-L5 and L5-S1. (PX12 at 7) Dr. Gornet opined there was a connection between his work activities and his current level of pain and need for treatment. *Id.* There was no testimony elicited regarding the cervical spine or mention of neck related complaints.

At Respondent's request, Dr. Donald deGrange examined Petitioner on August 24, 2023, for the lumbar spine. (RX2, deposition exhibit #2) Petitioner reported he started developing back pain and bilateral shoulder pain while working in June of 2022, which became intolerable on June 24, 2022. Dr. deGrange further noted Petitioner had been receiving therapy three times a week at Multicare Specialists and was referred to Dr. Bradley for the left shoulder and to Dr. Gornet for the low back. Dr. deGrange noted the initial treatment record at Multicare Specialists indicated the low back pain and bilateral shoulder pain had started in March 2021, and Petitioner became unable to perform physical labor since June 24, 2022. It was further noted that Petitioner had a right shoulder rotator cuff tear in 2018 and now there was concern for a possible left shoulder rotator cuff tear. Petitioner also reported having received two epidural injections for the lumbar spine and was scheduled for discography with Dr. Gornet on September 9, 2023. Dr. deGrange diagnosed a lumbar strain set against the backdrop of ongoing low back pain with disc degeneration as seen in the MRI at L4-L5 and L5-S1. Dr. deGrange opined the work activities caused a temporary flare up

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of the degenerative condition at L4-5 and L5-S1 which should have lasted 6 to 12 weeks. He opined no additional treatment or restrictions were required for the lumbar strain. *Id.* Dr. deGrange subsequently reviewed the operative report for the discography performed by Dr. Gornet on September 8, 2023 and indicated the operative findings did not alter his prior opinion regarding the lumbar spine. (RX2, deposition exhibit #3)

Dr. Gornet saw Petitioner on November 2, 2023 and recommended disc replacement at L4-L5 and L5-S1 with the possibility that a hybrid disc replacement with fusion at L5-S1 may be required instead. (PX5 at 19) Dr. Gornet noted a bone density scan and a new MRI of the lumbar spine would be required before undertaking surgical intervention.

On November 29, 2023, the parties deposed Dr. Paletta. (PX13) Dr. Paletta testified he examined Petitioner on June 6, 2023, during which Petitioner's then-current complaints included pain in the front top of the left shoulder, localized to the AC joint, with pain going into the upper arm. (PX13 at 8-9) Petitioner denied numbness or tingling and reported the shoulder pain worsened with overhead use of the arm or with cross-body use of the arm. (PX13 at 9) Dr. Paletta testified Petitioner's neck was normal on examination and the left shoulder exhibited tenderness over the AC joint and pain at the end point with range of motion testing. (PX13 at 10) Dr. Paletta testified he noted pain with cross-body adduction testing. Dr. Paletta further testified he obtained x-rays which showed mild degenerative changes localized to the AC joint and which correlated with the exam findings and symptoms. (PX13 at 11) Dr. Paletta also reviewed the MRI of the left shoulder which showed degenerative changes involving the insertion of the rotator cuff without tearing. The MRI also confirmed degenerative changes in the AC joint consistent with the x-rays. (PX13 at 12) Dr. Paletta also noted edema of the distal clavicle and acromion, which Dr. Paletta explained was clear evidence of an ongoing inflammatory response at the end of the collarbone in the setting of the AC joint arthritis. *Id.* Dr. Paletta testified since the MRI was over a year old that an updated MRI along with diagnostic injections should be performed before proceeding with surgery. He noted that if an injection did not relieve the symptoms then one would have to look at other potential sources of the pain. (PX13 at 15)

On December 7, 2023, the parties deposed Dr. deGrange. (RX2) Dr. DeGrange's testimony addressed his evaluation of the lumbar spine.

On January 5, 2024, Petitioner underwent an MRI of the left shoulder. (PX4 at 5) The study showed a type II acromion arch with mild acromioclavicular degeneration. The study was otherwise normal. Dr. Paletta then reviewed the MRI and noted the imaging was normal with the exception of minimal AC joint arthritis. (RX4 at 1) It was Dr. Paletta's impression that Petitioner's left shoulder had mild AC joint degenerative changes. Given the mild findings, Dr. Paletta recommended diagnostic injections of the AC joint, with future decision making regarding shoulder surgery dependent on the results. *Id.*

Petitioner returned to Dr. Gornet for follow-up on February 1, 2024, with complaints of low back pain going into the buttocks and hips including the left groin. (PX5 at 23) There were

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no documented complaints regarding the neck. Dr. Gornet noted that Dr. Paletta had recommended surgery for the left shoulder and was waiting for approval. *Id.*

On March 11, 2024, Petitioner underwent diagnostic injections for the left shoulder with Dr. Blake which consisted of three separate injections into the AC joint, subacromial bursa, and the glenohumeral joint.(PX7 at 5-6) Dr. Blake noted that none of the three injections provided any improvement. *Id.*

On June 26, 2024, Dr. Paletta reviewed the results from Dr. Blake's procedure report and noted the diagnostic left shoulder injections failed to provide any improvement. (RX4 at 5) Dr. Paletta therefore concluded that Petitioner's ongoing pain is not related to any anatomic area of the shoulder. Dr. Paletta recommended consideration be given for an MRI of the cervical MRI spine. *Id.*

On July 31, 2024, Petitioner saw Dr. Eavenson at Multicare Specialists and denied neck pain and denied numbness and tingling. It was Dr. Eavenson's opinion that the shoulder pain was likely originating from the AC joint rather than cervical spine. (PX3 at 645). She recommended Petitioner return to Dr. Bradley for further evaluation of the shoulder. *Id.*

On August 5, 2024, Petitioner returned to Dr. Bradley. (PX6 at 4-5). Petitioner reported he had been working with his therapist on his neck as well as his shoulder. Dr. Bradley noted Petitioner continued to have pain "directly over the AC joint and slightly over the lateral aspect of his shoulder." Petitioner reported being seen by Dr. Paletta and reported Dr. Paletta believed his pain was from the accident. Dr. Bradley noted he did not possess Dr. Paletta's records for review. On examination, Dr. Bradley noted positive findings for impingement and a positive finding for AC joint pain with cross chest testing. Dr. Bradley diagnosed left shoulder impingement with AC joint arthropathy and recommended surgery for subacromial decompression with distal clavicle excision.

Dr. Gornet saw Petitioner on August 8, 2024 and noted Petitioner continued to have low back pain along with bilateral shoulder pain, left worse than right. (PX5 at 30) The request for approval regarding his recommended lumbar spine surgery remained pending. Dr. Gornet noted Petitioner had received injections for the left shoulder which failed to provide relief. He further noted Petitioner had recently seen Dr. Paletta who reportedly believed the cervical spine may be the origin of Petitioner's shoulder pain. *Id.* Dr. Gornet ordered an MRI of the cervical spine to assess whether or not Petitioner has cervical pathology. *Id.*

That same day, Petitioner underwent an MRI of the cervical spine. (PX4 at 6-7) This MRI showed bilateral foraminal disc herniations with annular tear at C4-C4 resulting in mild central canal stenosis and moderate bilateral foraminal stenosis, and a disc herniation with extruded disc fragment at C4-C5 resulting in moderate bilateral foraminal stenosis, right greater than left. The MRI also showed disc herniations at C5-C6 and C6-C7 without central canal stenosis or foraminal stenosis.

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Dr. Gornet next saw Petitioner on October 10, 2024. (PX5 at 332) Dr. Gornet reviewed the recent MRI of the cervical spine and noted herniations present at C3-C4, C4-C5 and C6-C7 with some foraminal encroachment, particularly at C4-C5. It was Dr. Gornet's assessment that Petitioner had "some pathology" which could refer pain into the shoulder which may need to be treated down the line but for the present time Petitioner did not exhibit a lot of neck pain, explaining the symptoms were more of a trapezius and shoulder pain. *Id.* Dr. Gornet indicated he saw no reason why shoulder surgery could not proceed if there was shoulder pathology. *Id.*

On October 15, 2024, the therapist at Multicare Specialists, Corey Voss, noted Petitioner continued to struggle with neck and back pain. (PX3 at 722)

At Respondent's request, Dr. deGrange re-examined Petitioner on November 20, 2024, for evaluation of the cervical spine. (RX3, deposition exhibit #2) As summarized by Dr. deGrange, Petitioner reported he was also having neck pain that he either did not report or was not documented. Petitioner maintained that he had been having neck pain which actually started about two months before the accident date of June 24, 2022. Petitioner reported he was still having neck pain and shoulder pain. Petitioner attributed his neck pain to the heavy lifting he performed at work along with welding in awkward postures. Dr. deGrange noted the prior findings of Dr. Paletta and more recently, the failed response to the three diagnostic injections provided by Dr. Blake on March 11, 2024. Dr. deGrange noted that based on the failed injections, it was believed the symptoms must be coming from the neck, which prompted the recent request for a new IME. Petitioner described standing on a ladder and extending his body away from the ladders while welding seams for the compartment panels on railcars which imparts strain on his cervical spine. Apart from that, Petitioner could not identify any other activity that could be responsible for his neck pain. (RX3, deposition exhibit #2 at 2-3) Dr. deGrange noted Petitioner denied having any radiating symptoms into the right or left upper extremities. Petitioner did report left shoulder pain that is similar to the right shoulder pain he had when he injured his rotator cuff. Dr. deGrange reviewed the report of the cervical MRI completed on August 8, 2024. Dr. deGrange diagnosed disc degeneration with chronic cervical strain.

Based on the history provided, which included Petitioner's self-described history of ongoing neck pain that started two months before the June 24, 2022 accident date and which Petitioner reported has continued unabated since then, Dr. deGrange opined that the current cervical spine condition was causally related to the welding tasks performed by Petitioner. (RX3, deposition #2 at 5-6) Dr. deGrange further opined that Petitioner's neck pain was a mechanical neck pain appearing to be a muscular issue. It was also his opinion that surgical intervention for the cervical spine was not reasonable and necessary.

At Respondent's request, Dr. deGrange reviewed the imaging from the MRI of the cervical spine and authored a report dated January 3, 2025. (RX3, deposition exhibit #3) Dr. deGrange described in detail the findings seen throughout the cervical spine and opined "there is nothing in these more than 200 views that lead me to conclude that he had anything more than a cervical strain." *Id.* at 2. Dr. deGrange noted the MRI demonstrated age-appropriate degenerative changes

throughout the cervical spine against a backdrop of a narrow canal. He noted there was no evidence for cord compression or nerve root compression. Dr. deGrange continued to opine that Petitioner's employment activities may have caused a cervical strain but did not cause the degenerative changes seen in the MRI. *Id.*

The parties re-deposed Dr. deGrange on January 22, 2025 regarding his evaluation of Petitioner's cervical spine. (RX3) Dr. deGrange testified that the MRI of the cervical spine showed age-related degenerative changes which were reflective of a combination of genetics and all the work done throughout his life. (RX3 at 14) Dr. deGrange reiterated there was no cord compression and no nerve root compression. Dr. deGrange testified it was his diagnosis that Petitioner had multilevel intervertebral disc degeneration. Dr. deGrange opined that the degenerative changes were not caused by Petitioner's employment activities. (RX3 at 15) Dr. deGrange further testified that there was no permanent aggravation of the cervical spine condition from the employment. (RX3 at 16) Dr. deGrange noted that Petitioner had not worked since June 2022 and yet Petitioner's symptoms had continued, thereby suggesting the employment exposure was not a causal factor. On cross-examination, Dr. deGrange opined that the employment activities contributed to Petitioner's condition of ill-being on a temporary basis. (RX3 at 31) During follow-up questioning, Dr. deGrange testified the more appropriate and accurate diagnosis was chronic neck pain which in his opinion was not the result of the repetitive work activities. (RX3 at 33) Asked to explain the apparent discrepancy between his testimony and his recent IME report, Dr. deGrange testified it was his opinion that Petitioner's cervical spine condition was a muscular issue and not an intrinsic spine issue. Dr. deGrange further testified the causation opinion as stated in his report was based on his "taking the person, the claimant at his word." (RX3 at 33-34) Dr. deGrange then testified that the causation opinion as stated in his recent IME report was no longer his opinion. (RX3 at 35) On re-direct, Dr. deGrange testified that the degenerative changes seen in the MRI of the cervical spine do not explain Petitioner's bilateral shoulder symptoms. (RX3 at 42)

It is Petitioner's burden to prove by a preponderance of the evidence that the condition in his cervical spine is causally related to his repetitive employment activities. Based on the record before us, we find there was a failure of proof in that regard. Petitioner's employment involved numerous and varied physical activities performed on a daily basis, which included lifting, handling a variety of tools including impact tools and grinders, and welding while situated on ladders and man-lifts. (T. 12-13; PX1) Petitioner testified his job duties included working on railcars, changing gears, cutting trains, separating walls apart and then welding them back together. (T. 11) As for the claimed cervical spine condition, however, Petitioner attributed his neck symptoms to welding while situated on a ladder. During his IME with Dr. deGrange on November 20, 2024, Petitioner reported "he goes up on a ladder, holds onto the ladder, and extends his body away from the ladder while welding the seams in some of the compartment panels that exist in the railcars." (RX3, deposition exhibit #2 at 2-3) Dr. deGrange noted Petitioner was unable to identify any other activities that might have played a role in causing his symptoms. *Id.* Petitioner failed, however, to provide any information as to the frequency he performed welding on a ladder in this manner and he failed to provide any information as to the duration of his welding activities.

In assessing causality, the Commission may consider evidence, or the lack thereof, of the manner and method of a claimant's job to determine if the employment duties were sufficiently repetitive to establish a compensable injury. *Williams vs. Industrial Comm'n*, 244 Ill. App. 3d 204, 211, 614 N.E.2d 177 (1993). The Commission may also consider the degree to which the employment activity varied. *Id.* at 209. In claims where the claimant alleges repetitive trauma resulting solely from repeated unusual or awkward motions without weight related factors, quantitative evidence of weight, force, and degree of effort or exertion is not required. *Darling vs. Industrial Comm'n*, 176 Ill. App. 3d 186, 194-195, 530 N.E.2d 1135 (1988). Nevertheless, claimants seeking compensation under a repetitive trauma theory "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n*, 176 Ill. App. 3d 186, 192, 530 N.E.2d 1135 (1988). We conclude there is insufficient evidence on which to causally connect Petitioner's cervical spine condition to his employment activities.

Additionally, the medical opinions in this case fail to provide sufficient support. Though medical testimony is not always required, it is firmly established that expert medical testimony is necessary where the questions involved are within the experts' knowledge only and outside the knowledge of laypersons. *Nunn vs. Industrial Com.*, 157 Ill. App. 3d 470, 510 N.E.2d 502 (1987). The Commission has previously recognized that compression neuropathy via repetitive trauma falls under this category requiring such expert testimony. *Jones vs. State of Illinois, Menard Correctional Center*, 19 IWCC 0521; 2019 Ill. Wrk. Comp. LEXIS 898, citing *Johnson vs. Industrial Comm'n*, 89 Ill. 2d 438 (1982). See also, *University of Illinois vs. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 210236WC-U

Dr. Gornet testified on June 12, 2023, at which time his opinion testimony was confined to his assessment of the lumbar spine condition, which he diagnosed as discogenic pain from the discs at L4-L5 and L5-S1. Dr. Gornet's testimony does not support Petitioner's claim regarding the cervical spine. In his subsequent treatment records, Dr. Gornet noted he became aware that Dr. Paletta later suspected the shoulder symptoms may be due to the cervical spine, which prompted Dr. Gornet to order the MRI of the cervical spine on August 8, 2024. After the MRI was obtained, Dr. Gornet re-evaluated Petitioner on October 10, 2024, and noted there was "some pathology" present in the cervical spine but found Petitioner was not exhibiting a lot of neck pain at that time. Dr. Gornet did not express any causation opinion in his records.

Dr. Paletta testified on November 29, 2023. Dr. Paletta testified his practice is focused on the shoulder, elbow, and knee. He offered no causal connection opinion relative to the cervical spine. Likewise, Dr. Bradley testified he treats the upper and lower extremities and does not treat the spine. (PX11 at 5) Dr. Bradley offered no opinions regarding Petitioner's cervical spine.

Dr. deGrange opined the employment activities was a contributing cause; however, he drew a distinction between the pathology identified in the MRI and Petitioner's chronic neck pain and indicated there was at most a temporary aggravation. Dr. deGrange then changed his opinion during cross-examination and testified that was his opinion as of November 20, 2024 but "[i]t no

longer is.” (PX3 at 34-35) Dr. deGrange’s opinion testimony was inconsistent and therefore unreliable. Additionally, Dr. deGrange based his initial opinion on the self-described history Petitioner provided at the second IME, during which Petitioner reported his neck pain actually started about two months before the accident date of June 24, 2022, and continued without cessation through the time of the second IME. Dr. deGrange testified his opinion was based on his “taking the person, the claimant at his word.” (RX3 at 33-34) Given the absence of documented neck pain for a period of six months, we find the history Petitioner provided to Dr. deGrange was not credible.

The mere existence of testimony does not require its acceptance. See *Moore v. Illinois Workers' Comp. Comm'n*, 2023 IL App (3d) 220524WC-U, P86, (citing collected cases). See also, *Smith vs. Industrial Comm'n*, 98 Ill. 2d 20, 24, 455 N.E.2d 86 (1983) (“The fact that respondent offered no conflicting medical testimony and that the claimant's testimony is not controverted does not mandate a finding in claimant's favor.”) Internal inconsistencies in a claimant’s testimony or conflicts between the claimant’s testimony and medical records may be taken to indicate unreliability. *McCauslin vs. Ascend Wellness Holdings, LLC*, 25 IWCC 0177; 2025 Ill. Wrk. Comp. LEXIS 212. The documented histories (or lack thereof) contained in medical records created contemporaneously with or shortly after an alleged accident may be given more weight than subsequent medical histories and trial testimony. See *Ader vs. Ill. Workers' Comp. Comm'n*, 2021 IL App (1st) 200688WC-U, P47. See also *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 677, 928 N.E.2d 474 (2009).

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 in certain circumstances. *International Harvester v. The Industrial Commission*, 93 Ill. 2d 59, 442 N.E.2d 908 (1982). The Commission finds those circumstances are not present in this case, as there was a significant gap in time between the claimed manifestation date of June 24, 2022, and the first documented complaint for neck pain. After reporting his low back and bilateral shoulder condition to Respondent on June 24, 2022, Petitioner underwent mandatory drug testing which came back positive for marijuana, resulting in his immediate termination. Petitioner then had no documented neck pain until six months later. As Petitioner’s neck pain was considered muscular in nature without radiculopathy, and the MRI demonstrated multi-level degenerative changes, Petitioner was required to show his condition of ill-being was related to his employment and not the result of the normal degenerative process. And while neck pain and shoulder pain can overlap, there were objective and subjective medical findings pointing to the shoulder as the source of Petitioner’s pain. The Arbitrator determined Petitioner suffered an initial aggravation or exacerbation in his left shoulder, but his current condition was not causally related to an injury of the shoulder. (Arbitration decision at 21)

Accordingly, based on the foregoing, the Commission finds Petitioner failed to prove he sustained a causally related repetitive trauma injury to the cervical spine arising out of and in the course of his employment.

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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?

Having found Petitioner failed to establish a repetitive trauma injury to the cervical spine, the Commission denies medical benefits for treatment related to the cervical spine.

Additionally, the Commission finds a portion of the treatment and therapy services provided at Multicare Specialists was medically unnecessary and unreasonable. Petitioner received physical therapy and chiropractic care at Multicare Specialists from June 30, 2022, through February 6, 2025. The records reflect 376 visits and Multicare Specialists generated gross charges of \$215,720.00. Under Section 8(a) of the Act, claimants are entitled to receive medical benefits "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred" so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a).

The overwhelming majority of visits failed to document any change or improvement in Petitioner's symptoms. Dr. deGrange testified that six weeks of therapy was reasonable. (RX2 at 20-21). Dr. Gornet testified that up to three months of chiropractic/physical therapy services were reasonable but no longer than that if Petitioner was not improved. (Px. 12 at 14). Respondent requests the Commission modify the award for medical expenses to allow medical benefits for the treatment provided by Multicare Specialists, limited to a period of six weeks of treatment, consistent with the opinion of Dr. deGrange, for the period of June 30, 2022, to September 30, 2022. The Commission finds the treatment and therapy provided by MultiCare Specialists was excessive and medically unreasonable and unnecessary. The Commission, however, finds Dr. Gornet's opinion regarding the appropriate duration of therapy as the more credible opinion on this issue. Accordingly, the Commission finds Respondent is liable for the treatment and therapy rendered over the three-month period from June 30, 2022, through September 29, 2022.

Additionally, the Commission finds a portion of the chiropractic services were medically unreasonable and unnecessary. Petitioner testified the chiropractors at Multicare Specialists would come in and "talk" to him at each therapy visit and did not provide actual treatment. (T. 46-47). Respondent argues this charging for conversations with no actual treatment performed by the chiropractor was unreasonable. In Petitioner's response brief, Petitioner argues it is reasonable for a chiropractor to check with a patient once or twice a week, but conceded that a charge for a chiropractic consultation after every visit should be corrected by the Commission. (Petitioner's brief at 17) Petitioner therefore requested a modification to the arbitration award to limiting the chiropractic charges to two consultations per every five therapy sessions. *Id.* The Commission agrees and modifies the Arbitrator's decision to award compensation for the chiropractic consultations limited to two consultations per every five therapy sessions.

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

The Commission, having found Petitioner failed to establish a repetitive trauma injury to the cervical spine causally related to the employment, further finds Petitioner has failed to establish entitlement to prospective medical care for the cervical spine.

IT IS THEREFORE ORDERED BY THE COMMISSION that all medical benefits and prospective medical benefits related to the cervical spine are hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$816.76 per week for a period of 138-6/7 weeks, commencing 6/24/22 through 2/19/25, 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. Respondent shall be given a credit of \$80,725.32 for benefits previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary physical therapy expenses of Multicare Specialists from June 30, 2022 through September 29, 2022, and shall pay the reasonable and necessary chiropractic expenses of Multicare Specialists limited to two chiropractic visits per every five physical therapy sessions during the same period ending September 29, 2022, as set forth in Petitioner's Exhibit #10 under §8(a) and §8.2 of the Act. All other chiropractic expenses and therapy expenses are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable, necessary and causally related medical expenses listed in Petitioner's Exhibit #10 pursuant to §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay prospective medical expenses for the lumbar spine surgery recommended by Dr. Gornet.

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.

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

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

JANUARY 2 2026

KAD/swj

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/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Stephen J. Mathis

Stephen J. Mathis

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the Arbitrator's Decision in its entirety. I view the credibility of the medical experts differently than the majority. On that basis, I would find the cervical spine condition causally related to the work accident, and the treatment at Multicare Specialists reasonable and necessary.

Causal Connection

The claimant in a workers' 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.*

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 v. Workers' Compensation Comm'n (Nichols)*, 371 Ill. App. 3d 882, 864 N.E.2d 266 (5th Dist. 2007).

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In Dr. DeGrange's November 20, 2024, report regarding his examination of Petitioner's cervical spine he opined that the work activities were a contributing factor to Petitioner's ongoing neck pain on a chronic and repetitive basis. Dr. DeGrange later testified that this opinion was formed prior to reviewing the MRI report.

As a result of reviewing the MRI, Dr. DeGrange changed his opinion. While he testified that the degenerative changes were reflective of both Petitioner's natural genetics and the work that he had done throughout his life, he then denied a causal connection based on the degenerative and non-acute nature of the condition. Dr. DeGrange was not asked whether the work-related degeneration accelerated the onset of symptoms or the need for treatment.

In his testimony, Dr. DeGrange has applied a different causal standard than Illinois' 'a cause' standard by denying causation due to a lack of acute onset. Additionally, his testimony was that the work duties were a cause of the degenerative changes. I consider his opinion ambiguous and contradictory. For this reason, I would give Dr. DeGrange's opinions on causation lesser weight. Weighing the medical evidence in that light, I would find Petitioner met his burden of proof by the preponderance of the evidence that a work accident caused an injury to his cervical spine arising out of his duties and affirm the Arbitrator.

Reasonableness and Necessity of Bills

Dr. Gornet testified that physical therapy was appropriate if it reduced pain and helped a patient maintain light duty status. Dr. DeGrange testified that patients excused from work should be performing some exercise, and it is healthy to do so. From this testimony and testimony in other claims, I am generally aware that pre-surgical therapy and rehabilitation has been shown to improve post-surgical recovery and is recommended by some of the medical experts that testify before the Commission. No party has introduced medical evidence by deposition, report, or utilization review to the contrary. I conclude that physical therapy was reasonable and appropriate for Petitioner as a step to maintain his health and improve his eventual outcome.

Even if Petitioner's appointments with Multicare Specialists were not compensable as a means of improving his orthopedic outcome, I would find that they were compensable to improve his condition while treatment approval was pending. On December 15, 2022, Petitioner stated to Multicare Specialists that his shoulder is loosened up and his back feels looser when he attends his therapy sessions. He made similar reports on January 5, 2023, February 1, 2023, March 1, 2023, and February 15, 2024. Petitioner also reported an improvement in his ability to sleep. One purpose of workers' compensation is to provide workers with medical care, and the recent decision in *Tazewell* ruled that treatment for relief from pain is compensable. *Tazewell County v. Illinois Workers' Compensation Comm'n*, 2025 IL App (4th) 230754WC, ¶ 31 (2025). For this additional reason, I would have affirmed the award of Petitioner's treatment with Multicare Specialists.

/s/ Amylee H. Simonovich
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017005
Case Name	James Nicholas v. Metro East Industries
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Keefe Jr

DATE FILED: 4/3/2025

/s/ Jeanne AuBuchon, Arbitrator

Signature**INTEREST RATE WEEK OF APRIL 1 2025 4.07%**

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)

James Nicholas

Employee/Petitioner

v.

Metro East Industries

Employer/Respondent

Case # **22** WC **017005**

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 19, 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, **06/24/22**, 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 **\$63,707.28**; the average weekly wage was **\$1,225.14**.

On the date of accident, Petitioner was **46** 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 **\$75,725.32** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$5,000.00** for other benefits for a total credit of **\$80,725.32** under Section 8(j) of the Act.

Respondent is entitled to a credit for **medical bills paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services listed in Petitioner's Exhibit 10, pursuant to the medical fee schedule, as provided in Sections 8(a) of the Act. Respondent shall be given a credit for medical benefits that have been paid.

Respondent shall pay Petitioner temporary total disability benefits of \$816.76/week for 138 6/7 weeks, commencing 06/24/22 through 02/19/25, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$80,725.32 for benefits previously paid.

Respondent shall authorize and pay for: 1) lumbar spine surgery as recommended by Dr. Matthew Gornet and diagnostic testing and treatment attendant thereto; and 2) further evaluation of the Petitioner's cervical spine as recommended by Dr. Gornet – pursuant to Section 8(a) of the Act.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

APRIL 3 2025

PROCEDURAL HISTORY

This matter proceeded to trial on February 19, 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 on June 24, 2022, that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's neck, back and left shoulder conditions; 3) payment of medical bills; 4) entitlement to prospective medical care to the Petitioner's back, neck and shoulder; and 5) entitlement to temporary total disability (TTD) benefits.

FINDINGS OF FACT

At the time of the accident, the Petitioner had been employed since October 2014 and worked as a carman. (T. 10-11) He testified to job duties of changing gears, cutting trains and petition walls apart and welding them back together – "a lot of heavy stuff." (T. 11) He said he was required to work at or above shoulder level "all day." (Id.) He said he had to lift 50-100 pounds every day, weld above shoulder level, crawl and climb ladders. (T. 12-13) He said he would hold the ladder with one hand, extend his body away from the ladder and weld with the other hand. (T. 12)

The Petitioner submitted a Physical Demands Analysis for the position of carman that was prepared for the Respondent by Athletico Physical Therapy on August 20, 2020, that the Petitioner said fairly and accurately depicted the general demands of his job. (T. 13, PX1) The analysis gave a job summary that stated the worker is required to handle impact tools, sockets, air jacks, grinders, torches, sledge hammers and other tools. (PX1) The worker is required to work from man-lifts and ladders, open and close rail car doors and replace plating. (Id.) Working postures range from crawling to working at overhead levels. (Id.) The job classification falls within the heavy work

demand level. (Id.) Essential functions included lifting and carrying up to 100 pounds and pushing and pulling up to 135 pounds. (Id.) Load-handling demands of the job included frequent lifting, carrying, pushing or pulling 34-57 percent of the workday. (Id.) The analysis also listed frequent twisting of the head and back. (Id.)

On cross-examination, the Petitioner acknowledged that he received a form of incentive pay in which if he finished a job that was bid for 10 hours of work but was finished in six hours, he would leave work but would get paid for the entire 10 hours. (T. 59) The Petitioner acknowledged that his pay records showed he performed direct work 55 percent of the time. (T. 61) When asked if he told his doctors about the incentive pay arrangement, the Petitioner said he let them know about the description of the job and heavy-duty tasks he performed. (T. 62-63)

The Petitioner admitted that he injured his right shoulder at work in the past, for which he underwent surgery. (T. 13-14) He said he was allowed to return to work with no permanent restrictions. (T. 14) The Petitioner, who is right-hand dominant, said that following the surgery, his right arm was not as strong as his left, and he favored it “quite a lot.” (T. 14-15) He said he developed pain in his shoulders and low back that progressively became worse, with his shoulder pain radiating into his arm and low back pain radiating into his leg. (T. 15-16) He believed his low back and shoulder problems were caused by his job duties and told his supervisor. (T. 16) He was sent to Midwest Occupational Medicine. (Id.)

On June 24, 2022, the Petitioner presented to occupational medicine specialist Dr. Panayiotis Ellinas, and complained of right low back pain, bilateral shoulder pain and right heel pain radiating up to the right back. (PX2) The Petitioner reported noticing these symptoms over several months but could not quantify the time. (Id.) After an examination, Dr. Ellinas diagnosed

right low back pain, bilateral shoulder pain and right heel pain – all nonoccupational – and returned the Petitioner to work as tolerated. (Id.)

The Petitioner testified that he underwent a drug test after reporting his injury and was fired as a result. (T. 17-18) On cross-examination, the Petitioner agreed that during his employment with the Respondent, other employees with workers' compensation claims worked modified duty. (T. 36)

On June 30, 2022, the Petitioner presented to Dr. Ashley Eavenson, a chiropractor at Multicare Specialists, and complained of bilateral shoulder pain and lower back pain that began in March 2021. (PX3) He described his work and history of shoulder surgery. (Id.)

Dr. Eavenson examined the Petitioner and ordered X-rays that showed foraminal encroachment at L5-S1 and bilateral shoulder acromioclavicular (AC) joint impingement. (Id.) She diagnosed bilateral shoulder impingement/possible rotator cuff tear and lumbar disc protrusion versus lumbar strain. (Id.) She ordered MRIs of the lumbar spine and left shoulder, performed therapeutic ultrasound and took the Petitioner off work until further notice. (Id.) The Petitioner began therapy with Physical Therapist Corey Voss on July 5, 2022, and continued to see chiropractors at Multicare Specialists. (Id.)

The MRIs were performed on July 13, 2022, by radiologist Dr. Matthew Ruyle at MRI Partners of Chesterfield. (PX4) The lumbar spine MRI showed: central broad-based protrusions at L4-5 and L5-S1 with a midline caudally extruded disc fragment and midline caudal annular (sic) tear/fissure at L5-S1; moderate bilateral foraminal stenosis at L5-S1; mild foraminal stenosis at L4-5; and no central canal stenosis at either level. (Id.) The left shoulder MRI showed: posterior supraspinatus and anterior infraspinatus glenohumeral sided enthesopathic changes without evidence for tear; AC joint arthropathy with marrow edema on both sides of the joint; and

undersurface hypertrophy resulting in a mild degree of supraspinatus outlet stenosis and myotendinous junction impingement. (Id.)

Dr. Jonathan Brooks, another chiropractor at Multicare Specialists, reviewed the MRIs on July 18, 2022, and referred the Petitioner to Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis. (PX3) Dr. Brooks stated that if the Petitioner's shoulders continued to bother him, he would refer him to Dr. George Paletta, an orthopedic surgeon at Performance Sports Medicine Institute. (Id.) Dr. Brooks ordered continued physical therapy and a home exercise program. (Id.) He continued restrictions. (Id.)

The Petitioner presented to Dr. Gornet on July 22, 2022, with a chief complaint of low back pain to both sides but particularly to the right buttock and hip and pain into his upper thigh. (PX5) He also had bilateral shoulder pain left greater than right and occasional tingling in his fingertips. (Id.) He related his problems to his job activities and explained his job duties consistently with his testimony. (Id.) He reported increasing pain over the past three months and continuing pain after four weeks of treatment at Multicare Specialists. (Id.)

Dr. Gornet examined the Petitioner and took lumbar and cervical X-rays. (Id.) He reviewed the July 13, 2022, MRI and said it revealed disc pathology with central disc protrusions at L4-5 and L5-S1 consistent with the Petitioner's symptoms. (Id.) He saw no evidence of severe stenosis and said there was central beaking (tongue-like protrusions) of the discs at L4-5 and L5-S1. (Id.) Dr. Gornet diagnosed discogenic pain at L4-5 and L5-S1. (Id.) He believed the Petitioner sustained what sounded to be an aggravation of his underlying structural disc pathology. (Id.) He recommended pain medication, a muscle relaxant and steroid injections. (Id.) He gave light duty work restrictions with a 10-pound limit, no repetitive bending or lifting and alternating between sitting and standing as needed. (Id.)

The Petitioner continued to see a chiropractor and undergo physical therapy approximately three times a week at Multicare Specialists with no change in his symptoms. (PX3) Per the recommendation of Dr. Eaveson, Dr. Daniel Priebe, a family medicine physician at Multicare Specialists, performed a steroid injection to the Petitioner's left shoulder. (Id.) On October 10, 2022, Dr. Eaveson referred him to Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics, for his shoulder. (Id.)

The Petitioner presented to Dr. Bradley on November 7, 2022, and relayed an almost three-year history of increasing left shoulder pain and pointed to the lateral anterior aspect of his shoulder as the location of his pain. (PX6) He described working in construction as a carman doing welding and fabrication of railway cars. (Id.) He reported his right shoulder surgery and said that in the postoperative period, he had to use his left shoulder to do everything and began developing pain in his shoulder, which he tolerated and treated nonoperatively until June 29, 2022, when he couldn't take the pain anymore and filed a report. (Id.)

Dr. Bradley noted that the Petitioner reported that he had physical therapy and an injection, which really had not provided any relief. (Id.) Dr. Bradley reviewed office notes from Multicare Specialists and the July 13, 2022, left shoulder MRI. (Id.) Dr. Bradley agreed with Dr. Ruyle's reading of the left shoulder MRI. (Id.) He performed a physical examination and X-rays. (Id.) He diagnosed left shoulder impingement with AC arthropathy, recommended left shoulder arthroscopic subacromial decompression with distal clavicle excision and gave work restrictions of no lifting greater than 20 pounds with the left upper extremity overhead and no repetitive overhead use of the left upper extremity. (Id.) He opined that the chronic repetitive use of the shoulder contributed to the development of some acromioclavicular disease and, in the postoperative period after surgery on his right shoulder, this disease became very aggravated and

painful. (Id.) He opined that the Petitioner's ongoing left shoulder pain and need for treatment, including surgical intervention, was directly related to the chronic repetitive work he has done working as a carman and fabricating railcars. (Id.)

The Petitioner returned to Dr. Gornet on February 13, 2023, with low back pain to both sides, particularly the right buttock and hip, as well as bilateral shoulder pain and tingling. (PX5) Dr. Gornet noted that the Petitioner was "still having neck pain," but placed that on hold. (Id.) He again recommended lumbar injections. (Id.)

The Petitioner underwent a right L4-5 interlaminar epidural steroid injection (ILESI) on March 14, 2023, performed by Dr. Helen Blake, a pain management specialist at United Physicians Group. (PX7) Dr. Blake performed an L5-S1 ILESI on April 11, 2023. (Id.) The Petitioner testified that the injections made his symptoms worse. (T. 50)

On May 26, 2023, Dr. Bradley testified consistently with his records. (PX11) He said his examination showed that the Petitioner's pain was coming from the AC joint, and the MRI showed inflammation and bruising at both sides of the AC joint, the collarbone and the shoulder blade. (Id.) He said his diagnosis of AC arthropathy was "kind of proven" with the location and results of the injection. (Id.)

Dr. Bradley acknowledged that the Petitioner had some degree of degeneration or arthritis in his AC joint. (Id.) He opined that using his left shoulder for his work activities aggravated that degeneration, and that aggravation was unable to be calmed down and returned to baseline. (Id.) He said the treatment the Petitioner received had been reasonable and necessary, adding that the treatment prior to his examination was exactly what he would have done. (Id.)

Dr. Bradley stated that he recommended surgery because the Petitioner's pain had increased despite having anti-inflammatories, therapy and injections. (Id.) He said the surgery he

recommended involved cutting off the tip of the collarbone, relieving the pressure on the joint. (Id.) He said that without the surgery, the Petitioner was not likely going to see any improvement in his pain or function. (Id.)

On cross-examination, Dr. Bradley acknowledged that Dr. Priebe's notes regarding the injection did not specify what area of the shoulder was injected but said the Petitioner pointed to the site of the injection and said the injection lasted for a few short hours then wore off. (Id.) Dr. Bradley stated that he would be willing to try another injection but was still comfortable with going to surgery because of the longevity of the Petitioner's condition. (Id.)

The Respondent sent the Petitioner for a Section 12 examination on his shoulder by Dr. Paletta on June 6, 2023. (PX13, Deposition Exhibit 2) The Petitioner reported having shoulder symptoms for several months prior to the reported date of injury of June 24, 2022. (Id.) He described his job as a carman reconstructing railroad cars. (Id.) Dr. Paletta noted the job duties reflected in the job demands analysis. (Id.) The Petitioner reported that prying off deck boards and replacing them was the most problematic activity for him. (Id.) He also reported that after his right shoulder surgery, he never felt that shoulder was completely back to normal and, consequently, he favored his left shoulder. (Id.)

Dr. Paletta reviewed the Petitioner's medical records and the July 3, 2022, left shoulder MRI. (Id.) He said the MRI showed: evidence of some mild rotator cuff tendinopathy involving predominately the supraspinatus; enthesopathic changes at the insertion of the cuff at the supraspinatus and infraspinatus; and hypertrophic degenerative changes at the AC joint with mild edema of the distal clavicle and acromion. (Id.) He performed a physical examination and took X-rays, which showed mild degenerative changes at the AC joint. (Id.)

Dr. Paletta diagnosed chronic AC joint pain in the setting of AC joint arthropathy with AC joint inflammatory response. (Id.) He opined that the Petitioner's work activities did not cause the underlying AC joint arthritis. (Id.) He recommended that the Petitioner be limited with regard to any overhead activities including no lifting more than 10 pounds overhead and no repetitive reaching crossbody. (Id.) He said he would not recommend surgical intervention at that time but would recommend repeating the MRI scan and a series of diagnostic injections if the MRI showed continued inflammatory response at the AC joint. (Id.) He said careful documentation of pain relief and response to the injections would be critical in determining the source of the pain and whether any surgical intervention might be beneficial. (Id.) He stated that if a diagnostic injection of the AC joint provided dramatic symptom relief, then arthroscopy with distal clavicle excision would be reasonable with a high likelihood of success. (Id.) He said that if the injections were negative, then the prognosis with surgical intervention would be guarded at best. (Id.)

On June 12, 2023, Dr. Gornet testified consistently with his records at a deposition. (PX12) He said that his treatment plan was that if the Petitioner had limited pain relief from the injections, he would perform a CT discogram at L3-4 and L4-5. (Id.) He said he would not perform the test at L5-S1 because he already had enough information on that disc, given the pathology present. (Id.) He said he would use the L3-4 disc as a negative control and, if the L4-5 level was positive, he would perform a two-level lumbar disc replacement. (Id.)

The Petitioner returned to Dr. Gornet on August 21, 2023, and reported that the injections provided only temporary relief. (PX5) Dr. Gornet recommended the CT discogram and continued work restrictions. (Id.)

On August 24, 2023, the Petitioner underwent a Section 12 examination by orthopedic surgeon Dr. Donald deGrange. (RX2 Deposition Exhibit 2) The Petitioner told Dr. deGrange that

on or about June 24, 2022, he was performing his usual and customary job duties as a carman and welder and began to experience severe low back pain as the day progressed. (Id.) He indicated that he tried to continue to work but the severity of the pain prevented him from doing so. (Id.) The Petitioner complained to Dr. deGrange of low back pain at the lumbosacral junction radiating in a broad swath across the low back into the tops of the iliac crest and occasionally into the buttocks but no radiating symptoms into either of his legs or feet. (Id.)

Dr. deGrange performed an examination and reviewed medical records and the July 13, 2022, lumbar MRI, which he said showed a broad-based 1-2 mm bulge at L4-5 and a broad-based central herniation of approximately 3-4 mm. (Id.) He saw degenerative fissures with a mild degree of facet arthropathy. (Id.) He said the canal, lateral recesses and foramina were patent. (Id.)

Dr. deGrange diagnosed lumbar strain and lumbar spine degenerative disc disease. (Id.) He stated that the Petitioner's self-described activities that occurred on or about June 24, 2022, would be best characterized as a lumbar strain set against the backdrop of ongoing low back pain as well as disc degeneration. (Id.) He said the incident in question would be considered a temporary flare-up of his pre-existing injury and would be expected to run its full course approximately 6-12 weeks post incident. (Id.) Dr. deGrange said the Petitioner would reach maximal healing from the lumbar strain by September 24, 2022, which would end the need for further diagnostic testing or medical treatments, and he would have the ability to return to his usual and customary job duties. (Id.)

On September 8, 2023, Dr. Gornet performed the discogram. (PX5, PX8) He found the disc at L3-4 to be non-provocative and the L4-5 disc to be provocative with a posterior annular tear and anterior annular tear. (PX5) The post-discogram CT scan performed by Dr. Ruyle showed: 1) grade 1 retrolisthesis with circumferential disc bulge and midline caudally-extruded

disc fragment at L5-S1, resulting in mild to moderate bilateral foraminal stenosis but no central canal stenosis; 2) extended nuclear cavity with a right far lateral full-thickness annular tear/fissure at L4-5 and circumferential disc bulge resulting in moderate bilateral foraminal stenosis but no central canal stenosis; and 3) minimal circumferential disc bulge at L3-4 resulting in mild foraminal stenosis but no central canal stenosis. (PX5, PX9)

At a follow-up visit on November 2, 2023, Dr. Gornet recommended disc replacement surgery, adding that there was a possibility of a fusion at L5-S1 and a disc replacement at L4-5, but that he was leaning toward two disc replacements. He continued work restrictions. (Id.)

Dr. Paletta testified consistently with his report at a deposition on November 29, 2023. (PX13) He opined that the Petitioner's job activities either caused the Petitioner's condition or caused a chronic exacerbation or increase in the symptoms related to the conditions. (Id.) He said the Petitioner's subjective complaints were consistent with the exam findings and supported with the objective findings on the imaging studies. (Id.)

Dr. deGrange issued another report on November 30, 2023, after reviewing the lumbar discogram. (RX2, Deposition Exhibit 3) He said the new records did not cause him to change his opinions. On December 7, 2023, Dr. deGrange testified consistently with his reports at a deposition. (Id.) He said he has treated a number of workers for the Respondent and had a good idea of how taxing that job is. (Id.)

Regarding disc herniations, Dr. deGrange acknowledged that a lot are asymptomatic and whether they can be symptomatic varies from one patient to the next. (Id.) He said a central herniation is typically not symptomatic. (Id.) He said that his examination of the Petitioner and the MRI revealed no active nerve root compression or irritation nor signs of acuity. (Id.)

Dr. deGrange stated that the physical therapy and MRI were reasonable and necessary, but the injections were not in the absence of radiculopathy. (Id.) Regarding the discogram, he said that studies have shown a false positive rate of 40 percent and that discograms don't really coincide with or give any predictive value for the outcome of surgery. (Id.) As to the Petitioner's discogram, he said the results showed tears that he would expect from a laborer of 47 years. (Id.) He said the Petitioner had all the hallmarks of structural breakdown owing to the ravages of time. (Id.) However, Dr. deGrange would not agree that it could be scientifically concluded that the "entirety" of the Petitioner's situation could be attributed to industrial exposure. (Id.) He cited studies that concluded that 80 percent of changes in the spine are due to genetic influences. (Id.) He said there are people doing the Petitioner's job who don't have the issues he had. (Id.)

Regarding the recommended lumbar spine surgery, he said it would not be attributable to the Petitioner's work exposure of June 24, 2022. (Id.) He said that it has been his experience that if all treatment has failed, surgery may actually make things worse. (Id.)

On cross-examination, Dr. deGrange acknowledged that the disc anomalies shown on the MRI could be responsible for the symptoms that the Petitioner related to him at his evaluation. (Id.) Regarding the continuation of the Petitioner's symptoms past the time Dr. deGrange said he expected them to resolve, he said the reasons for that were unclear because the inciting activities had been removed. (Id.) He believed the Petitioner "lapsed into a situation of chronic pain." (Id.)

The left shoulder MRI recommended by Dr. Paletta was performed on January 5, 2024, by Dr. David Dusek, a radiologist at MRI Partners of Chesterfield. (PX4) It showed no rotator cuff pathology, unremarkable long head of the biceps tendon, grossly intact glenoid labrum and mild AC degeneration. (Id.) Dr. Paletta reviewed the MRI that day and found it to be "entirely normal with the exception of minimal AC joint arthritis." (RX4) He recommended a diagnostic injection

of the AC joint and said that if the injection provided dramatic relief of the Petitioner's symptoms, it would be reasonable to consider arthroscopy and distal clavicle excision. (Id.) He said that if the injection did not provide significant relief and was a negative diagnostic injection, then surgery would be highly unpredictable. (Id.)

The Petitioner returned to Dr. Gornet's office on February 1, 2024, and continued to complain of low back pain going to both buttocks, both hips and left groin. (PX5) He was adamant that his pain and symptoms affected his life and quality of life and wanted to proceed with surgery. (Id.)

On March 11, 2024, Dr. Blake performed diagnostic AC joint, subacromial bursa and glenohumeral joint injections. (PX7) Five minutes after the procedures, the Petitioner remarked that he had no improvement of his pain symptoms. (Id.) An examination revealed pertinent positives for pain. (Id.)

Dr. Paletta issued another report on June 26, 2024, and said that given the fact that the diagnostic injections were negative without improvement of pain, they indicated that the Petitioner's ongoing pain was not directly related to any anatomic area of the shoulder. (RX4) He opined that there was no further orthopedic treatment required for the shoulder. (Id.) He recommended consideration of an MRI of the cervical spine and possible consultation with physiatry. (Id.)

The Petitioner testified that his neck pain has been present since before June 2022. (T. 40-41) He said that in his particular field, he felt aches and pains every day because of the type of work and abuse his body took, and he kind of ignored them and shoved them off because he was paid through his production. (Id.) He said he still had neck pain at the time of arbitration that had not worsened since he last worked but had not gotten any better. (T. 41) He acknowledged that

in his accident report, he did not write down having neck pain, did not mark neck pain on his pain diagrams and did not report neck pain to Multicare Specialists. (T. 42) He said he reported neck pain to Dr. deGrange the second time he saw him. (T. 44) The Petitioner said that his pain, tingling and numbness in his left arm and hand had “always been there” before June 2022 but not before 2014. (T. 44-45)

At arbitration, the Respondent submitted an email from Respondent’s counsel to Petitioner’s counsel on July 10, 2024, regarding a letter to Petitioner’s counsel purportedly explaining TTD termination. (RX5) The letter itself was not attached.

The Petitioner returned to Dr. Bradley on August 5, 2024, with pain directly over his AC joint and slightly over the lateral aspect of his shoulder. (PX6) Dr. Bradley continued to be convinced that the Petitioner’s pain was coming from his AC joint and the underlying hypertrophy of that joint. (Id.) He again recommended surgery and gave work restrictions. (Id.)

The Petitioner continued to follow up with Dr. Gornet. (PX5) At an August 8, 2024, visit, Dr. Gornet noted that Dr. Paletta believed the Petitioner may have a cervical origin of his shoulder pain. (Id.) Dr. Gornet had no problem working the Petitioner up for his neck but said his back was taking the main forefront. (Id.) He scheduled the cervical MRI. (Id.)

The cervical MRI was performed on August 8, 2024, by Dr. Ruyle. (PX4) It showed: C4-5 circumferential disc bulge with a midline herniation and midline caudally extruded disc fragment, resulting in dural displacement with moderate right greater than left foraminal stenosis but no central canal stenosis; C3-4 midline and bilateral foraminal herniations with a midline annular tear/fissure resulting in mild central canal stenosis with moderate right greater than left foraminal stenosis; and midline herniations at both C5-6 and C6-7 resulting in dural displacement but no central canal stenosis or foraminal stenosis. (Id.)

On October 10, 2024, the Petitioner followed up with Dr. Gornet, who said the cervical MRI revealed no significant cord compression but central herniations predominantly at C3-4, C4-5 and C5-6 with some foraminal encroachment particularly at C4-5 on the right and on the left predominantly at C4-5. (PX5) Dr. Gornet stated that if Dr. Paletta believed there was shoulder pathology present, he saw no reason why Dr. Paletta could not move forward with a shoulder procedure. (Id.) He said the cervical pathology could refer pain into the shoulder itself and may need to be treated. (Id.) He said that the Petitioner did not have a lot of neck pain but more trapezius and shoulder pain. (Id.)

Dr. deGrange performed another examination on November 20, 2024. (RX3, Deposition Exhibit 2) The Petitioner reported that he was also having neck pain that he either did not report or was not documented but said he had those complaints since about two months prior to June 24, 2022. (Id.) The Petitioner told Dr. deGrange that his right shoulder surgery in 2018 really never provided much relief, and he continued to have pain thereafter, shifting the load over to the left shoulder. (Id.) He said that due to some of the awkward welding jobs he had to do within the confines of the railroad cars, his neck was exposed to heavy lifting and very awkward positions. (Id.)

The Petitioner characterized his neck pain as frequently mild and occasionally moderate with heavy lifting, repeated bending and twisting and especially prolonged extension that occurred as a consequence of his welding job. (Id.) He described many jobs where he goes up on a ladder, holds onto the ladder and extends his body away from the ladder while welding seams in some of the compartment panels in the railcars, which imparted a considerable strain on his cervical spine. (Id.) He did not have any significant radiating symptoms into the right or left upper extremities

but had pain in the area of the left shoulder similar to that in the right shoulder that resulted in the prior surgery. (Id.)

Dr. deGrange reviewed records from Dr. Paletta, Dr. Blake and Dr. Gornet and examined the Petitioner. (Id.) He reviewed the radiology report from the August 8, 2024, cervical MRI. (Id.) He pointed out that that he was evaluated by two shoulder surgeons and underwent left shoulder injections that didn't provide any improvement. (Id.) He stated that it appeared there was a contribution to the Petitioner's ongoing complaints from the cervical spine and left shoulder. (Id.) He said the Petitioner's shoulder complaints would "obviously and immediately implicate the left shoulder," but he also had mechanical neck pain due to fairly significant intervertebral disc degeneration, which was age appropriate. (Id.) He concluded that the Petitioner's work activities were a contributing factor to his ongoing neck pain on a chronic and repetitive basis. (Id.) He said the Petitioner had ongoing cervical strain with degenerative changes at multiple cervical discs. (Id.) He said that the Petitioner having a normal neurologic examination excluding the shoulder issues that would rule out surgery or injections. (Id.) He recommended physical therapy specifically for the cervical spine and said the need for evaluation and treatment would be attributable to the June 24, 2022, date of loss. (Id.) He gave restrictions of no prolonged work at or above shoulder level. (Id.)

On January 3, 2025, Dr. deGrange issued another report after having reviewed the actual cervical MRI. (RX3, Deposition Exhibit 3) He read the MRI as showing that all of the discs between C2-3 down to C6-7 were desiccated with degrees of bulging and bone spurring at almost every level. (Id.) He noted that at the midbody of C3, the canal diameter was smaller than usual. (Id.) He saw no evidence of acuity. (Id.) He did not see significant contact, deviation or compression of the spinal cord nor significant impingement or compression of the exiting nerves.

(Id.) He said there was nothing on the MRI that led him to include that the Petitioner had anything more than a cervical strain. (Id.) He said this mechanism would not require the number of treatments the Petitioner had received and still required. (Id.) He said any treatment that would require this amount of attention would be deemed to be excessive and of no medical benefit. (Id.) He stated that no additional testing or treatment was reasonable or necessary to address the Petitioner's cervical condition and that the Petitioner did not require any restrictions. (Id.)

At his last visit to Dr. Gornet's office on January 13, 2025, the Petitioner continued to have low back and bilateral shoulder pain. (PX5) Dr. Gornet was continuing to wait for approval of lumbar surgery. (Id.)

Dr. deGrange testified at another deposition on January 22, 2025. (RX3) He said the Petitioner's job activities did not permanently aggravate the Petitioner's cervical spine condition, adding that according to medical terms, aggravations are by their nature temporary. (Id.) He stated that the Petitioner continuing to have symptoms after the work exposure was removed confirms his opinion. (Id.) He said that any aggravation that may have occurred during the Petitioner's work-related activities would be expected to run its full course within days, if not weeks, but not persist for two years. (Id.) He acknowledged that he found the Petitioner's work activities were a contributing factor to his ongoing neck pain in November 2024 but said the Petitioner's chronic pain was not related to the work activities as of the time of the deposition. (Id.)

Dr. deGrange disagreed with Dr. Ruyle's reading of the cervical MRI, which he characterized as "spurious." (Id.) He said he never saw an extruded disc fragment nor multiple herniations and protrusions that were reported. (Id.) He acknowledged that shoulder pain can emanate from the cervical spine. (Id.) But he said he did not believe that, based on the cervical MRI, that this was the case for the Petitioner. (Id.)

Regarding, the physical therapy he had recommended in his report, Dr. deGrange testified that he did not know why he said that, noting that the Petitioner had been undergoing physical therapy for two years.

The Petitioner had a total of 370 visits to Multicare Specialists through January 29, 2025. (PX3) At his last visit to Dr. Eavenson on January 28, 2025, he reported no change in his condition. (Id.) He had pain with active lumbar flexion, extension and lateral flexion bilaterally, as well as having a positive straight leg raise bilaterally. (Id.) The Petitioner has continued to treat with Multicare Specialists. (T. 46) He said he sees and talks with the chiropractor, then undergoes physical therapy. (T. 46-47)

The Petitioner testified that he continues to experience a sharp going across his back and wrapping around his left thigh and into his groin area. (T. 26) He said that he feels pain in his shoulders any time he reaches out or lifts above his head. (T. 26-27) He said he has pain and numbness down his left arm and diminished strength. (T. 27) He said his low back and left shoulder symptoms have continued to get worse since June 2022. (T. 48) He demonstrated that his pain was at the top of the shoulder. (T. 71) He wants to undergo the surgeries recommended by Dr. Bradley and Dr. Gornet and wants further treatment of his neck symptoms by Dr. Gornet. (T. 27-28) He said he wants to get back to work. (T. 28) He said he has not tried to find another job because he thought he was not allowed to find other employment while on work comp. (T. 52-53)

The Respondent submitted video surveillance footage from November 20, 2024, and December 9, 2024, that showed the Petitioner unloading tools from a vehicle and carrying them with his left arm, carrying objects into a house with his left arm, carrying tiles with both arms and walking out of a Home Depot. (RX6)

The Petitioner testified that his father, James C. Nicholas, owns a business named Dream Doers, LLC, that makes epoxy products and performs home décor and renovation. (T. 29-30) He said he has tried to stay active and helps relatives and friends. (T. 30) He said he goes with his uncle, who is very knowledgeable in HVAC, electric and plumbing and observes him – trying to pick up on things and learn the trade. (T. 30-31) He admitted that on the day the surveillance video was taken, he carried ceiling tiles weighing less than a pound each. (T. 31-32) He said he cut circles in the ceiling tiles for can lights and brought them back as needed, which was within his restrictions. (T. 32-33) He denied hanging the tiles. (T. 68) He said he also was working with a guy who is teaching him how to do drywall and framing. (T. 52) He said he is not being paid for this work. (Id.)

CONCLUSIONS OF LAW

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

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id.* Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under

the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296, 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n.*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id.*

The Petitioner's usual labor involved lifting, pushing and pulling heavy objects on a frequent basis. The doctors agreed that the Petitioner's work activities caused or contributed to injuries in his low back, shoulders and neck but disagreed on the extent of those injuries, which will be considered below.

As to the shoulder, Dr. Bradley opined that the Petitioner's work activities aggravated pre-existing degeneration, and that aggravation was unable to be calmed down and returned to baseline. Dr. Paletta opined that the Petitioner's job activities either caused the Petitioner's condition or caused a chronic exacerbation or increase in the symptoms related to the conditions.

Regarding the lumbar spine, Dr. Gornet believed the Petitioner sustained an aggravation of his underlying structural disc pathology as a result of his work activities. Dr. deGrange said the work activities caused a lumbar strain, set against the backdrop of ongoing low back pain as well as disc degeneration.

The Petitioner's cervical spine did not garner attention until Dr. Paletta's report of June 26, 2024. Although the Petitioner testified that he suffered neck pain leading up to June 2022, there was no mention of such until Dr. Paletta's report. After having determined that the shoulder injury he originally diagnosed in June 2023 was not present on the January 5, 2024, MRI, Dr. Paletta

appeared to suggest the Petitioner's symptoms were coming from his neck and recommended a cervical MRI. It was at that time that the neck became an issue.

Dr. Gornet found cervical disc pathology, which he said could refer pain into the shoulder itself and may need to be treated. Dr. deGrange concluded that the Petitioner's work activities were a contributing factor to his ongoing neck pain on a chronic and repetitive basis.

Based on all the above, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his shoulder, low back and neck injuries arose out of and in the course of his employment.

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

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 doctors agreed that the Petitioner had pre-existing degeneration in his shoulder, low back and neck. As stated above, they found the Petitioner suffered injuries to those areas in performing his work activities. It is the current nature of any such injuries that is in dispute.

As to the Petitioner's left shoulder, Dr. Bradley and Dr. Paletta both saw changes in the Petitioner's AC joint on the July 13, 2022, MRI attributable to the Petitioner's work activities. Because the Petitioner had already undergone physical therapy and an injection, Dr. Bradley recommended surgery. Upon Dr. Paletta's recommendation, the Petitioner underwent another left shoulder MRI on January 5, 2024, that Dr. Paletta said was entirely normal with the exception of minimal AC joint arthritis. He recommended diagnostic injections that were performed and provided no symptom relief, which Dr. Paletta said indicated that the Petitioner's ongoing pain was not directly related to any anatomic area of the shoulder. At that time, Dr. Paletta recommended looking at the cervical spine as a source of the Petitioner's symptoms.

It does not appear that Dr. Bradley reviewed the January 5, 2024, MRI. His last record on August 5, 2024, makes no reference to the MRI nor to Dr. Paletta's findings that the Petitioner's ongoing pain was not related to the shoulder anatomy.

Therefore, the Arbitrator relies on Dr. Paletta's opinions and finds that although the Petitioner suffered an initial aggravation or exacerbation of degeneration in his left shoulder, his current condition is not causally related to an injury of the shoulder.

Regarding the Petitioner's low back, Dr. Gornet believed the Petitioner sustained an aggravation of his underlying structural disc pathology as a result of his work activities. Both he and Dr. Ruyle saw pathology on the MRI that Dr. deGrange did not. Dr. deGrange said the work activities caused a lumbar strain – a temporary flare-up of his pre-existing injury – that would be expected to run its full course approximately 6-12 weeks post incident. However, the Petitioner's symptoms have not resolved. Dr. DeGrange was unable to explain why these symptoms continued despite the “inciting activities” being removed.

In a recent case, the Appellate Court did not draw a distinction between temporary and permanent aggravation where a Section 12 examiner opined that work-related repetitive trauma -- “temporarily aggravated” a pre-existing condition. *Tazewell Cnty. v. Ill. Workers' Comp. Comm'n*, 2025 IL App (4th) 230754WC. The Arbitrator will not draw such a distinction in this case and finds it is sufficient that the Petitioner suffered an aggravation of his pre-existing condition as a result of his work activities.

Another issue with Dr. deGrange's opinions is his reliance on finding no acuity in the Petitioner's condition. Such a finding is not relevant to a repetitive injury, which by its nature is occurs over time. Dr. deGrange also made statements that appear to support finding that the Petitioner's work activities contributed to his current condition. He said there was a structural breakdown owing to “ravages of time,” which presumably would including the Petitioner's heavy labor over a period of years. He did not agree that it could be scientifically concluded that the “entirety” of the Petitioner's situation could be attributed to industrial exposure, which leads to the conclusion that the Petitioner's work was a contributing factor. He also acknowledging that the disc anomalies shown on the MRI could be responsible for the Petitioner's symptoms.

In looking at the Petitioner's cervical spine condition, the Arbitrator reaches the same conclusion. Following his November 20, 2024, examination, Dr. deGrange concluded that the Petitioner's work activities were a contributing factor to his ongoing neck pain on a chronic and repetitive basis and recommended physical therapy and restrictions that he attributed to the Petitioner's work. After reviewing the cervical MRI films, Dr. deGrange opined that the Petitioner's job activities did not permanently aggravate his degenerative cervical spine condition, and the temporary aggravation would be expected to run its course within days, if not weeks. As was the case with the Petitioner's lumbar spine, the Petitioner's cervical symptoms have continued.

The circumstantial evidence in this case supports a finding of causation of the Petitioner's current lumbar and cervical conditions. The Petitioner had been able to perform his job duties until his existing physical structure gave way under the stress of his usual labor, and he has been no longer able to perform these duties.

Lastly, as to the surveillance videos, the Arbitrator finds that they do not rebut nor disprove the findings of the doctors. The activities shown in the videos do not come close to the strenuous activities the Petitioner performed for hours at a time at his job.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his shoulder condition until the time of Dr. Paletta's latest opinion and his current low back and neck conditions are causally related to the Petitioner's work activities.

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

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

Dr. deGrange found the lengthy chiropractic treatment and physical therapy was unreasonable for what he termed “temporary” aggravations of underlying conditions. Based on the findings above regarding Dr. deGrange’s opinions and the fact that the Petitioner’s condition has not resolved, the Arbitrator finds it was reasonable and necessary for the Petitioner to continue conservative treatment. This treatment further appears necessary in light of delays while awaiting approval of more extensive treatment.

Dr. deGrange also objected to lumbar injections performed in the absence of radiculopathy and the discogram performed by Dr. Gornet. Based on the findings above regarding causation and Dr. Gornet’s rationale for his treatment plan, the Arbitrator finds that these were reasonable and necessary as well.

Therefore, the Arbitrator finds that the medical services provided were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner’s Exhibit 10. 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).

Although Dr. Bradley recommended surgery for the Petitioner’s left shoulder, he apparently did not review the second MRI. The Arbitrator therefore does not award prospective

surgery for the Petitioner's left shoulder based on Dr. Paletta's opinion that the second MRI did not show the pathology that the first MRI did.

As to the lumbar spine surgery recommended by Dr. Gornet and his proposed further evaluation of the Petitioner's cervical spine, the Arbitrator finds this to be reasonable and necessary, based on the findings above regarding causation and the fact that lengthy conservative treatment has not relieved or cured the effects of the Petitioner's injuries.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care in the form of lumbar surgery and further cervical evaluation as recommended by Dr. Gornet. 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.

According to the Request for Hearing, the Petitioner claims entitlement to temporary total disability benefits from June 24, 2022, through February 19, 2025. He has been either excused from work or under restrictions from his treating physicians that Respondent has not accommodated for that period.

The Illinois Supreme Court addressed the issue of a claimant's entitlement to TTD while under light duty restrictions when the employment has been terminated. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 923 FN.E.2d 266 (2010). When a claimant seeks TTD benefits, the dispositive inquiry is whether their condition has reached MMI.

Id. at 136. There are three circumstances under which TTD benefits may be suspended or terminated before MMI: (1) if the employee refuses to submit to medical, surgical, or hospital treatment essential to their recovery; (2) if the employee refuses to cooperate in good faith with rehabilitation efforts; or (3) if the employee refuses work falling within the physical restrictions prescribed by their physician. *Id.* at 146-47. See also *Sharwarko v. Illinois Workers Compensation Comm'n*, 390 Ill.Dec. 293, 28 N.E.3d 946 (2015). None of these criteria apply to this Petitioner, and the Supreme Court imposed no affirmative duty on an injured employee to look for work within their temporary restrictions when their employer does not accommodate those restrictions.

In addition, the Arbitrator finds this short surveillance videos to be unpersuasive in the determination of whether Petitioner can work. An injured worker is not required to demonstrate total incapacity or helplessness before TTD benefits may be awarded. *Interlake, Inc. v. Industrial Comm'n*, 86 Ill.2d 168, 176, 56 Ill.Dec. 23, 427 N.E.2d 206 (1978). An employee who works a negligible amount of time is not precluded from collecting temporary TTD benefits. *E.R. Moore v. Industrial Comm'n*, 71 Ill.2d 353, 361, 17 Ill.Dec. 207, 376 N.E.2d 206 (1978). Although the surveillance videos showed the Petitioner lifting and carrying items for minutes at a time, these activities do not negate his inability to perform his strenuous job duties.

Therefore, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 24, 2022, through February 19, 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	21WC028618
Case Name	Aaron Campbell v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0002
Number of Pages of Decision	8
Decision Issued By	Stephen Mathis, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/5/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

21 WC 28618

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Aaron Campbell,

Petitioner,

vs.

No. 21 WC 28618

State of Illinois/Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator and denies Petitioner's claim for the reasons stated below.

On October 13, 2021, Petitioner filed an application for adjustment of claim alleging repetitive trauma to bilateral hands and wrists, with the manifestation date of August 30, 2021. On October 18, 2021, Petitioner amended the application for adjustment of claim to change the injuries to "bilateral hands, wrists and elbows/bilateral arms." The Arbitrator found the claim compensable. We disagree.

Petitioner, a right hand dominant correctional lieutenant, testified on direct examination that he worked for Respondent for almost 12 years; he started in October of 2012. The first seven years, he worked as a correctional officer. Then, he was promoted to correctional sergeant. Petitioner became a correctional lieutenant on December 1, 2019.

When Petitioner was a correctional officer, his job duties included daily lifting trays of food, inmate property boxes and inmate correspondence boxes. Further, Petitioner unlocked, locked, pushed and pulled the older doors, which did not always function well (both the lock mechanism and the door sliding mechanism). That part of the job required "a lot of pushing and pulling." Typically, Petitioner used his left hand to operate the lock with a key and his right hand to move the door. Both activities required force because of the condition of the locks and doors. Sometimes, Petitioner needed help to pull a door open. Petitioner operated the locks and doors "multiple dozen a day." Also, Petitioner performed bar rapping several times every day on every cell assigned to him (50 or 55 cells), which

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caused his arms to vibrate. Additionally, Petitioner tested doors for integrity and cuffed/uncuffed inmates, which also required force. Petitioner wrote or typed various logs and reports. As a correctional sergeant, Petitioner performed the same job activities. Likewise, as a correctional lieutenant, Petitioner performed the same job activities. Additionally, Petitioner has been on the tactical unit since 2013 and participated in multiple trainings per month.

As a hobby, Petitioner did Brazilian Jiu-Jitsu.

In 2017, Petitioner noticed numbness in his hands, which progressively worsened. He also noticed loss of grip strength in both hands.

On August 30, 2021, Petitioner consulted Dr. Matthew Bradley. Petitioner described his job activities to Dr. Bradley and told Dr. Bradley that his primary care physician had recommended nighttime braces over a year earlier, but they did not help. Electrodiagnostic studies performed September 30, 2021, showed bilateral carpal tunnel syndrome and left cubital tunnel syndrome. Dr. Bradley thought the conditions could be work-related. On October 4, 2021, Petitioner reported the conditions to Respondent. At Respondent's request, Petitioner was examined by Dr. Patrick Stewart, who did not think the conditions were work-related.

On cross-examination, Petitioner testified that he worked the day shift from 2016 to 2019. Since 2019, he has been working the second (3 to 11 p.m.) shift. Compared to the first shift, only 40 percent of the inmates go out on passes. As a correctional lieutenant, Petitioner does not do bar rapping. As a correctional lieutenant, Petitioner operates cell doors "[m]ultiple times a week, but nowhere near as often as I was as a correctional officer or sergeant." Petitioner operates cell doors five times per shift now. Petitioner cuffs and uncuffs inmates "[m]ultiple times a day, every day."

Petitioner was on paternity leave from June 20 to August 20, 2021. Petitioner has been practicing Jiu-Jitsu once a week since 2016. His Jiu-Jitsu skills are not at a competitive level, and in the past six months he attended maybe one class. Petitioner also practices the following martial arts: Muay Thai, kickboxing and traditional boxing.

On redirect examination, Petitioner testified that he typically worked eight-hour shifts. The tactical training took place four days a month. Petitioner saw his primary care physician for the repetitive trauma symptoms in 2020. The primary care physician did not believe the symptoms were work-related. Petitioner had the symptoms before, during and after the paternity leave.

Major Shaun Gee testified that Petitioner was a good employee. Major Gee had no corrections or disagreements with Petitioner's testimony.

The medical records in evidence show that on August 30, 2021, Dr. Bradley noted the following history and complaints: "[The patient] reports increasing numbness and tingling in his bilateral hands. He first saw his primary care physician back in January and was diagnosed with carpal tunnel syndrome and was provided night splints. His symptomatology has gone from intermittent to constant. He is now in addition to the numbness and tingling, having weakness and is dropping objects. ¶ [The patient] has worked as a correctional officer for approximately 7 years performing significant repetitive activities including turning brass keys and old locks, pulling on iron doors which are often low-functioning and difficult to move. He also reports significant fine motor use of his hands bilaterally

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writing the [sic] typing up reports in addition to placing and removing handcuffs. Recently he has become as Correctional Lieutenant. With his new job his symptoms have not resolved or changed. He does participate in mixed martial arts wearing gloves at all times. He has not had any significant history of numbness and tingling in his hands prior to beginning work as a correctional officer 7 years ago and really most significant symptoms prior to January of 2021.” Dr. Bradley stated the following preliminary causation opinion: “With the information that has been provided to me as of today, it is my medical opinion that the chronic repetitive activities required of [the patient] working as a Correctional Officer over the last 7 years have participated in and are causally related to the development of his bilateral carpal tunnel syndrome and the need for further evaluation and treatment to potentially include surgical intervention.”

Electrodiagnostic studies, performed September 30, 2021, showed severe bilateral carpal tunnel syndrome and mild/moderate cubital tunnel syndrome at the left elbow.

On November 10, 2021, Dr. Bradley performed a right carpal tunnel release. On December 17, 2021, Dr. Bradley performed a left carpal tunnel release and a left cubital tunnel release.

Dr. Bradley testified by evidence deposition on March 3, 2023, providing the following causation opinion: “[T]his gentleman worked for *** seven, eight, nine years, whatever it was at the correctional facility. ¶ He did a lot of repetitive activities that certainly would contribute to the development of carpal and cubital tunnel. He doesn’t have any real comorbidities or other reasons for developing carpal tunnel. ¶ *** [I]t’s my opinion that the seven years of working for the Illinois Department of Corrections at Menard at least contributed to the development of his bilateral carpal tunnel and left-sided cubital tunnel.” On cross-examination, Dr. Bradley clarified his understanding of Petitioner’s job duties after he was promoted: “[I]t seems to me that as he moved toward lieutenant, he is doing a little bit more report writing, but still performing some of these repetitive activities of the doors and the locks.” Dr. Bradley did not know the extent of repetitive activities. Dr. Bradley further opined that Petitioner’s mixed martial arts activities could have contributed to the development of his conditions.

Dr. Stewart, a hand and upper extremity surgeon, testified by evidence deposition on February 13, 2024, after examining Petitioner at Respondent’s request on May 31, 2022. Dr. Stewart understood Petitioner job history as follows:

“He was employed at [Respondent], and he had been a Lieutenant for eight months prior to the onset, and prior to that, he was a Sergeant. And, so, I reviewed the different job descriptions that had been provided with [Petitioner]. He really didn’t have any objections. He added to some of those they would do, whether or not it was supervising some different things, like shakedowns and inspections that he would do as Lieutenant. He did inspections of the other correctional officers’ uniforms to make sure that they were appropriate and how put together they are. He then did also do different arbitrations for problems between inmates, and then he did evaluate and was in charge of identifying locks that were difficult or were not functioning correctly or were broken and would supervise those locks being taken out of circulation and the inmate being transferred out of the cell and location where that lock wasn’t functioning. He did report doing a lot of written reports, which could encompass a few hours a day, and 70 percent of these were typing or digital reporting, about 30 percent of them were written.”

Dr. Stewart provided the following accident/causation opinion: “I do not feel that [the conditions] were caused or aggravated by the varying job duties that he completed as a Lieutenant or as a Sergeant.” Dr. Stewart did not think Petitioner performed forceful or repetitive activities, had vibration exposure, or performed activities with exaggerated wrist position. Dr. Stewart stated:

“[N]one of those exist in the job titles as far as the correctional officers at [Respondent], sergeant or lieutenant because, despite the size of the keys, such as a Folger key, versus a house key, there’s not a significant amount of force required to utilize it, and in the case of a Folger’s key, it actually is interesting because you’d be using—it’s a large key that goes across the breadth of the hand. And, so, you’re actually using more forearm force to twist that than you are if it’s a smaller key where you’d be pinching between your thumb and index finger, for instance, to place the key in the lock and turn it. Notwithstanding those activities, even if they’re done hundreds of times a day, take a very short period of time, on the order of 1 to 2 seconds. So, if you do something 300 times a day and even if it takes 2 seconds, that’s a total of 600 seconds that you’re doing an activity out of an 8-hour workday. So, there’s a much greater period of time of recovery from an activity than there is doing the activity.”

On cross-examination, Dr. Stewart testified that Petitioner reported being a correctional officer for seven years prior to being promoted. Dr. Stewart did not review a job description for correctional officer. Dr. Stewart also did not review any job description prepared by Petitioner. Dr. Stewart never viewed a video of the job duties of a correctional officer. Dr. Stewart did review an old jobsite analysis from 2011. Dr. Stewart agreed that bar rapping can cause a vibration. Dr. Stewart did not know whether Petitioner performed bar rapping in the course of his employment. Dr. Stewart did not think Petitioner performed shakedowns as a sergeant or lieutenant. Dr. Stewart did not know whether Petitioner performed shakedowns as a correctional officer. Dr. Stewart did not know of Petitioner’s mixed martial arts activities. Dr. Stewart admitted that he had never found work activities of a correctional officer, a sergeant or a lieutenant to be a factor in the development of carpal and/or cubital tunnel syndrome.

The Commission has carefully considered the evidence and finds Dr. Bradley’s opinions equivocal and Dr. Stewart’s opinions without sufficient basis. The Commission therefore must draw on its institutional knowledge and expertise. The Commission finds that Petitioner failed to meet his burden of proof by a preponderance of credible evidence. The following things defeat Petitioner’s claim: Petitioner typically worked eight-hour shifts, whereas it is more common for Respondent’s correctional staff to work a great deal of overtime. Petitioner did not seek medical treatment while he was a correctional officer, when his job activities were more strenuous and repetitive. Since 2019, Petitioner has been working the second shift. Compared to the first shift, only 40 percent of the inmates go out on passes. After Petitioner became a correctional lieutenant, he saw his primary care physician for repetitive trauma-like symptoms in 2020 or 2021. The primary care physician did not believe the symptoms were work-related. Petitioner acknowledged that he had the symptoms before, during and after his paternity leave from June 20 to August 20, 2021. The Commission infers that Petitioner made his initial appointment with Dr. Bradley while on paternity leave. Lastly, the Commission finds it significant that Petitioner practiced mixed martial arts. The Commission therefore denies Petitioner’s claim.

All other issues are moot.

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IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 30, 2024, is hereby reversed and Petitioner's claim is denied.

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.

JANUARY 5 2026

SJM/sk

o-11/4/2025

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/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the Decision of the Arbitrator. After carefully considering the totality of the evidence, I find that Petitioner has met his burden of proving he sustained a repetitive trauma of bilateral carpal and cubital tunnel as a result of his activities at work.

The long-established threshold for a compensable injury is that the work-related accident need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. (*Emphasis added*) *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003).

Petitioner credibly testified regarding his overall employment duties with the Respondent over the over twelve (12) years of his employment, including his seven and half years as a correctional sergeant and the last four and a half years he spent as a lieutenant. The caselaw supports a contemplation of the whole of Petitioner's job duties with Respondent when assessing whether a claimant has sustained a work-related repetitive trauma injury. See *PPG Indus. v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130698 WC, ¶ 19 (2014), *Kishwaukee Community Hospital v. Ill. Indus. Comm'n*, 356 Ill.App.3d 915, 917–18, (2005) (over 30 years); *Oscar Mayer & Co. v. Ill. Indus. Comm'n*, 176 Ill.App.3d 607, 608, (1988) (15 years); *City of Springfield v. Ill. Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 300–301, (2009) (approximately 8 years); *Peoria County Belwood Nursing Home v. Ill. Indus. Comm'n*, 115 Ill.2d 524, 527, (1987) (6 years). Petitioner testified that prior to his current role as lieutenant, he engaged in many work-related activities that required the forceful use of his bilateral hands, wrists, and arms on a daily basis. This included lifting trays of food and beverages, property boxes and correspondence boxes containing books and legal paperwork. T.13-14. Petitioner's pushing and pulling involved older, heavy, metal doors which did not always function properly. T.14-15. He testified that the keying involved exponentially more force to open the door, sometimes causing a need for another person to open the door while two hands were used to key the door. T.15-16. He testified he would key, lock, unlock or open a door multiple dozens of times per day. He also performed bar rapping, estimating rapping 50 or 55 cells per day. T.19-20. Further, he was required to exert force when handcuffing uncooperative inmates. T.22-23. He also operated chuckholes which involved more keying of an external lock, as well as operating a sliding section of a prison door. T.66. He also generated reports, which were initially handwritten and

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were later completed on a non-ergonomic computer. T.23-25. Petitioner testified that once he became a correctional sergeant, he performed the same duties he had performed as a correctional officer but added logging and documentation duties. T.25-26.

Petitioner testified he had been a member of the tactical unit since 2013. T.26-27. This required him to use his hands and arms in multiple trainings per month, as well as searches for contraband. *Id.* In this role, he used riot batons, which reverberated a lot of energy. T.27.

At the time of hearing, Petitioner had been a lieutenant for four and a half years. T.28. He testified to being a believer of leading from the front, which meant he was performing the same work activities as a correctional officer.

Petitioner's descriptions of the activities provided an adequate picture of the duties involved not just as a lieutenant, but a correctional sergeant and correctional officer position. Petitioner held these positions with the Respondent for he held for twelve (12) years. Further, Major Shaun Gee, a shift supervisor for Respondent was able to listen to Petitioner's testimony regarding his job duties/activities and testified that nothing in the Petitioner's testimony was incorrect. T.70-71.

Dr. Bradley was most familiar with Petitioner overall and the development of his condition and is, therefore, well suited to provide a medical opinion as to the relation of Petitioner's compression neuropathies and his work duties. Dr. Bradley noted that he had both discussed with Petitioner his employment history and reviewed the intake form Petitioner had completed, which asked about Petitioner's job responsibilities and how often they were performed. T.168-169. Dr. Bradley understood Petitioner to have performed bar rapping, keying with Folger Adams keys, forceful pulling/pushing on heavy cell doors, pulling/pushing on poorly functioning locks, and writing reports. T. 169-170. This is consistent to Petitioner's description of his duties at hearing, as detailed above. Dr. Bradley testified those kinds of activities, were what initially started his symptomatology, which over time became chronic and eventually led to the need for bilateral surgical releases. T.171. Dr. Bradley opined that anything that required repetitive-type activities that cause microtraumas to the wrist and elbow could lead to swelling and inflammation, leading to carpal tunnel and cubital tunnel syndromes. T.165; 195-196. Notably, Dr. Bradley found Petitioner had no other significant co-morbidities that would put him at greater risk for carpal/cubital tunnel conditions.

I agree with the Arbitrator and find that both the facts provided by Petitioner and Dr. Bradley's opinions are sufficient to show that Petitioner's employment with Respondent was at least a factor in the development of his bilateral carpal and cubital tunnel conditions.

I disagree with the Majority's finding that Dr. Bradley's opinion was equivocal. Dr. Bradley demonstrated a clear understanding of Petitioner's job duties, based upon his discussions with Petitioner, Petitioner's written description of his job and Dr. Bradley's overall knowledge of correctional officer work. Dr. Bradley's opinion that Petitioner's repetitive job activities "certainly would contribute to the development of carpal and cubital tunnel" (T.180) was anything but ambiguous. Further, Dr. Bradley opined that the "seven years of working for the Illinois Department of Corrections at Menard at least contributed to the development of his bilateral carpal tunnel and left-sided cubital tunnel". *Id.* As he was able to describe these overall activities to his treating physician, Dr. Bradley, without limitation of a singular job title, I find Dr. Bradley's opinions regarding causation to carry more weight.

Further, the Majority's reasoning for finding Petitioner failed to meet his burden seems to be largely based upon the Petitioner's current less strenuous and repetitive position as a lieutenant and the timing of his need for treatment in relation to that job. However, as stated above, the caselaw is clear, that when considering the repetitive nature of Petitioner's job for causation purposes, we routinely look at the entirety of his employment history. This is due to the very nature of a repetitive trauma injury. A repetitive trauma injury is one which "has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction." *PPG Indus. v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, citing *Peoria County*, 115 Ill. 2d at 529; see also *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611 ("By their very nature, repetitive trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace."). It stands to reason that a claimant's entire work history may be necessary and relevant to determining whether a work-related, gradual injury was sustained. Here, when the entirety of Petitioner's employment with Respondent is considered, it supports Dr. Bradley's medical causation opinion of a work-related repetitive trauma injury.

Finally, I disagree the Petitioner's mixed martial arts practice precluded his daily repetitive work activities from being a factor in the development of his bilateral carpal and cubital tunnel conditions.

For the foregoing reasons, I would affirm the Decision of the Arbitrator.

/s/ Amylee H. Simonovich
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC043530
Case Name	Errica L. Hill v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0003
Number of Pages of Decision	32
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Joel Stephen
Respondent Attorney	Argy Koutsikos

DATE FILED: 1/14/2026

/s/Marc Parker, Commissioner

Signature

11 WC 043530

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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 down	☐ PTD/Fatal denied
	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Errica Hill,

Petitioner,

vs.

No. 11 WC 043530

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

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

At arbitration, the parties stipulated that Respondent paid Petitioner \$1,423.20, representing salary for 48 hours, for which credit may be allowed under §8(j) of the Act. That credit should have been, but was not, awarded to Respondent in the Arbitration Decision. We therefore find Respondent entitled to that credit, in addition to the \$178,587.90 TTD credit awarded to Respondent in the Arbitration Decision.

We also correct a clerical error in Arbitration Decision. The Decision awarded Petitioner 546-1/7 weeks of TTD, for the periods October 26, 2011 through October 23, 2012, and December 5, 2012 through May 26, 2022. Because we agree that Petitioner's permanent and total disability began on May 26, 2022, we find that her last day to receive TTD benefits was May 25, 2022. We correct that error, while also noting that the total periods of TTD to which Petitioner is entitled still total 546-1/7 weeks.

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All else in the Arbitration Decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2025, is modified as stated herein, and otherwise affirmed and adopted.

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

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

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

January 14, 2026

MP/mcp
o-12/18/25
068

/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC043530
Case Name	Errica L. Hill v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Joel Stephen
Respondent Attorney	Argy Koutsikos

DATE FILED: 6/6/2025

*/s/ Ana Vazquez, Arbitrator*_____
Signature**INTEREST RATE WEEK OF JUNE 3 2025 4.15%**

STATE OF ILLINOIS)
)SS.
 COUNTY OF Chicago)

☐	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**

Errica L. Hill
 Employee/Petitioner

Case # **11** WC **043530**

v.

Consolidated cases:

Chicago Transit Authority
 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 **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **March 7, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 25, 2011**, 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 **\$61,672.00**; the average weekly wage was **\$1,186.00**.

On the date of accident, Petitioner was **48** years of age, *single* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$178,587.90** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$178,587.90**.

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

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in Px1, Px3, Px4, Px7, Px13, and Px15, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including credit for such payments reflected in Rx13. By stipulation, Respondent is entitled to a credit in the amount of \$214,120.54 for medical expenses paid by Respondent. See Ax1, No. 9.

By stipulation, Respondent will pay any previously submitted unpaid medical bills directly to the provider in accordance with the fee schedule or negotiated rate, whichever is less, for medical services for the left shoulder for dates of service from October 25, 2011 until October 25, 2021, as well as for medical services for the cervical and lumbar spine rendered by Dr. Kanagaraju and Dr. Morgenstern. Tr. at 15-16.

Respondent shall pay to Petitioner temporary total disability benefits of **\$790.67/week** for **546 1/7 weeks**, commencing **October 26, 2011** through **October 23, 2012** and from **December 5, 2012** through **May 26, 2022**, as provided in Section 8(b) of the Act.

Permanent Total Disability

Respondent shall pay Petitioner permanent and total disability benefits of **\$790.67/week** for life commencing **May 26, 2022**, as provided in Section 8(f) of the Act.

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

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

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

**JUNE 6 2025**

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on March 7, 2025 in Chicago, Illinois before Arbitrator Ana Vazquez. The issues in dispute are (1) causal connection, (2) unpaid medical bills, (3) temporary total disability (“TTD”) benefits, and (4) the nature and extent of the injury.

FINDINGS OF FACT

On October 25, 2011, Petitioner was employed by Respondent as a full-time bus operator. Transcript of Proceedings on Arbitration (“Tr.”) at 23. Petitioner was hired by Respondent as a full-time bus operator in March 2004. Tr. at 23. Petitioner worked 40-plus hours per week. Tr. at 24.

Petitioner attended Harper High School and graduated in 1980. Tr. at 103. Petitioner attended one year of business college and obtained a certificate in business administration. Tr. at 103. Prior to working at Respondent, Petitioner drove a school bus for two years. Prior to driving a school bus, Petitioner worked as a mail carrier for the U.S. Postal Service for five years. Tr. at 104. Prior to working as a mail carrier, Petitioner worked as a laborer at Streets and Sanitation for about five years. Tr. at 104.

Petitioner is right-hand dominant. Tr. at 87-88, 150.

Petitioner did not have any issues with or receive medical treatment for her left shoulder or right shoulder from March 2004 up until October 25, 2011. Tr. at 24-25. Petitioner was not ever involved in any motor vehicle accidents where she injured her left or right shoulder during the same period. Tr. at 24-25. Petitioner did not have any work-related injuries to her left or right shoulders during the same period. Tr. at 25. Petitioner was not prescribed any physical therapy or pain/anti-inflammatory medication, was not recommended to undergo any type of surgery to the left or right shoulder by a physician, and did not undergo any injections to her left or right shoulders during the same period. Tr. at 25-26, 27. Petitioner did not sustain any slip-and-fall incidents injuring her left or right shoulders or sustain any trauma to the left or right shoulders during the same period. Tr. at 26. Petitioner did not miss any time from work because of her left or right shoulder during the same period. Tr. at 27. Petitioner did not have any difficulty driving a bus full-time prior to October 25, 2011. Tr. at 27.

Duties

Petitioner drove the bus while holding the steering wheel at 10 and 2. Tr. at 27. Petitioner performed a pre-trip inspection of the bus before leaving the garage. Tr. at 27-28. After leaving the garage, Petitioner would make a relief on the street, and would perform another inspection of the bus before relieving the bus operator. Tr. at 28. Petitioner would drive the bus, stopping to pick up passengers along the route, which consisted of over 100 stops. Tr. at 28-29. When picking up or dropping off passengers, Petitioner had to make sure that the passengers were seated. Tr. at 30. If there was a passenger in a wheelchair, Petitioner would make sure that the wheelchair was secure. Tr. at 30. Petitioner would open the bus door by using her right hand to hit a latch that released the doors. Tr. at 30-31. To kneel the bus, she would press a button. Tr. at 31. If a passenger needed assistance, Petitioner would assist them. Tr. at 31.

Accident

On October 25, 2011, Petitioner was involved in a motor vehicle accident while operating a bus. Tr. at 31-33. Rx2. The accident occurred at the intersection of Grand Avenue and Laramie. Tr. at 33. Petitioner testified that an individual ran a red light and hit the bike rack of the bus head-on. Tr. at 33. Petitioner testified that she braced, and her shoulders popped. Tr. at 33. Petitioner testified that her chest hit the steering wheel, her neck

went back and popped, and that she felt shocked. Tr. at 34. Petitioner held onto the steering wheel at the time of impact. Tr. at 34. Petitioner testified that the impact was very heavy. Tr. at 34. Petitioner was assisted by paramedics at the scene and transported to West Suburban Hospital. Tr. at 34-35.

On cross examination, Petitioner testified that there were passengers onboard the bus at the time of the accident. Tr. at 116. Petitioner testified that she did not file a claim against the driver of the other vehicle involved in the accident and did not receive any monetary recovery from the other driver's insurance company. Tr. at 119-120.

Medical Records Summary

On October 25, 2011, the Chicago Fire Department responded to a motor vehicle collision at the intersection of North Laramie and West Grand Avenue. Px14; Rx5 at 59-60. Petitioner complained of neck and back pain. It was noted that Petitioner was found standing. It was noted that Petitioner was the driver of a bus that struck another vehicle at approximately 25 miles per hour with minor damage to the bus and moderate damage to the vehicle. Petitioner denied loss of consciousness and other complaints. Petitioner was transported to West Suburban Hospital. At West Suburban Hospital, Petitioner underwent a CT scan of the cervical spine, which demonstrated (1) no acute fracture or traumatic AP malalignment and (2) disc protrusions at C5-6 and C6-7. Px14; Rx3; Rx5 at 48-58. Petitioner also underwent diagnostic imaging of the lumbosacral spine which demonstrated isolated degenerative changes at L5-S1, as well as diagnostic imaging of the chest which was normal. Petitioner testified that after she was discharged from West Suburban Hospital, she returned to the garage to drug test, and then was sent to Concentra Medical Center by Respondent. Tr. at 37-39.

On October 25, 2011, Petitioner was seen by Dr. Melissa F. Rendlen at Concentra Medical Center. Px12; Rx4. A consistent accident history is noted. Dr. Rendlen's assessments were cervical strain, lumbar strain, thoracic strain, and left shoulder strain. Petitioner was instructed to continue medications and begin physical therapy as scheduled.

Petitioner saw Dr. Bala Kanagaraju on October 27, 2011. Tr. at 43-44. Px13 at 3, 54. There is not an office visit note for this date within Px13. The Work Absence note reflects that Petitioner was under Dr. Kanagaraju's care for a neck sprain, sprain of the left shoulder/upper arm, chest wall trauma, and low back sprain. Petitioner testified that at the time of this visit, her left shoulder had gotten stiff, she experienced numbness and tingling down the left arm and in the hand, neck stiffness, headaches, and soreness in the chest. Tr. at 44.

On November 11, 2011, x-rays of the left shoulder and left humerus were obtained at Associated Medical. Px13 at 11; Rx6 at 11. The x-rays were normal.

On November 30, 2011, Petitioner underwent an MRI of the left shoulder at Preferred Open MRI which demonstrated (1) moderate arthritis/degenerative joint disease of the glenohumeral joint with maceration of most of the labrum, (2) supraspinatus tendinopathy with associated bursitis, and (3) os acromiale anomaly and mild arthritis/degenerative joint disease of the acromioclavicular joint. Px13 at 12-13; Px15 at 43-45; Rx5 at 43-45; Rx6 at 12-14.

On November 30, 2011, Petitioner underwent an MRI of the cervical spine at Preferred Open MRI which demonstrated a central herniation at C6-7. Px13 at 15-16; Px15 at 40-41; Rx5 at 40-42; Rx6 at 15-17.

On January 4, 2012, Petitioner saw Dr. J.M. Morgenstern at Gold Coast Orthopaedics & Rehabilitation. Px15 at 10-12; Rx5 at 10-11. A consistent accident history is noted. Dr. Morgenstern noted that Petitioner continued with neck pain and stiffness, as well as radiating pain from the neck in the left greater than the right shoulder. Petitioner reported decreased strength and pain with movement of the left shoulder, as well as increased

symptoms when attempting to rotate the left shoulder internally or externally. Petitioner reported increased discomfort to the neck with flexion of the head and neck. On examination, Dr. Morgenstern noted tenderness to the left greater than right paracervical spinal region, discomfort and pain radiating to the superior trapezius and supraspinatus bilaterally and worse to the left, increased discomfort and pain with flexion of the head and neck, tenderness in the anterolateral aspect of the left shoulder, limited flexion and abduction of the left shoulder, pain and difficulty reaching with her left fingers to the back of her neck at level C6, unable to reach her back with her left thumb, and positive impingement sign on the left upper extremity. Dr. Morgenstern's impressions were cervical disc syndrome and left shoulder impingement syndrome with evidence of adhesive capsulitis. Dr. Morgenstern noted that the cervical spine MRI demonstrated a central disc herniation at C6-7 and that the left shoulder MRI demonstrated supraspinatus tendinopathy with bursitis and arthritic changes leading to impingement of the shoulder. Petitioner was encouraged to continue with physical therapy. Petitioner was prescribed Mobic, Zantac, and Soma. Dr. Morgenstern noted that if the pain persisted, Petitioner was a candidate for a subacromial cortisone injection of the left shoulder, as well as manipulation under sedation and surgical arthroscopy if there was no improvement in range of motion. Dr. Morgenstern noted that Petitioner was also a candidate for a series of myotrigger injections to the cervical spine. Petitioner was kept off work.

Petitioner followed up with Dr. Morgenstern on January 16, 2012. Px15 at 12; Rx5 at 12. Petitioner's symptoms persisted. Petitioner was administered a cortisone injection to the left shoulder. Petitioner was kept off work.

Petitioner returned to Dr. Kanagaraju on January 19, 2012. Px13 at 6-8; Rx6 at 6-8. Petitioner reported continued pain over the neck, low back, center of chest, left shoulder, and left upper arm. Dr. Kanagaraju's diagnoses were neck sprain, low back sprain, left shoulder sprain, left upper sprain, and chest wall trauma. Petitioner was provided with therapy. Dr. Kanagaraju instructed Petitioner to return four times per week for physical therapy and once a week for doctor follow up. Petitioner was provided with a sling for the left shoulder. Petitioner was kept off work.

Petitioner again saw Dr. Morgenstern on January 30, 2012, at which time he noted continued symptoms of the left shoulder. Px15 at 13; Rx5 at 13. Dr. Morgenstern recommended manipulation of the left shoulder under sedation and a diagnostic/therapeutic arthroscopy for impingement. Petitioner was kept off work.

Dr. Morgenstern continued with his surgical recommendation for the left shoulder on February 15, 2012. Px15 at 14; Rx5 at 14.

Petitioner was provided physical therapy at Highland Community Center between November 19, 2011 and February 22, 2012. Px13 at 23-53; Rx6 at 18-53. Petitioner testified that the physical therapy did not help, then testified that it sometimes helped and that her pain level fluctuated each visit. Tr. at 45.

On February 28, 2012, Petitioner underwent (1) manipulation under anesthesia for capsulitis in the left shoulder and (2) diagnostic therapeutic arthroscopy with arthroscopic repair of proximal tear of rotator cuff, arthroscopic subacromial decompression with arthroscopic partial acromioplasty, resection of adhesions, resection of lyses, and arthroscopic resection of the coracoacromial ligament with arthroscopic bursectomy and debridement. Px1 at 227-228. Petitioner's postoperative diagnoses were (1) possible tear, rotator cuff, (2) irregularities of the glenoid labrum, (3) impingement syndrome, (4) type 2 acromion, and (5) AC joint hypertrophy. Petitioner testified that surgery helped initially, but then she could not get her arm out of "lock mode." Tr. at 55. Petitioner testified that the left shoulder arthroscopy did not give her any relief. Tr. at 58.

Petitioner followed up with Dr. Morgenstern on March 5, 2012, March 14, 2012, and March 26, 2012. Px15 at 15-17; Rx5 at 15-17. On March 5, 2012, physical therapy was ordered. On March 14, 2012 and March 26, 2012, Dr. Morgenstern noted that Petitioner continued with significant discomfort with range of motion of the left

shoulder. Petitioner was instructed to continue use of Tramadol, was prescribed Mobic and Zantac, and Petitioner was kept off work. Petitioner testified that she did not see improvement with physical therapy. Tr. at 58.

Petitioner returned to Dr. Kanagaraju on April 2, 2012. Px13 at 9-10; Rx6 at 9-10. Dr. Kanagaraju's diagnoses and treatment recommendations were unchanged. Petitioner was kept off work. Petitioner testified that as she treated with Dr. Kanagaraju, she experienced a lot of difficulty with normal activities. Tr. at 46.

Petitioner continued to follow up with Dr. Morgenstern in April 2012. Px15 at 18-19; Rx5 at 18-19. Dr. Morgenstern noted continued left shoulder symptoms, as well as increased symptoms of pain with therapy exercises. Dr. Morgenstern recommended Petitioner continue with physical therapy. Petitioner was kept off work.

Petitioner continued to see Dr. Morgenstern in May 2012. Px15 at 20-23; Rx5 at 20-23. Dr. Morgenstern noted continued left shoulder symptoms, as well as neck complaints. Petitioner reported significant increased symptoms of left shoulder pain with radiculopathy from the neck to the left upper extremity after therapy. Petitioner reported progressive increased symptoms of radiculopathy from the neck to the upper extremities. On May 2, 2012, a subacromial cortisone injection was administered to the left shoulder, and an EMG was recommended to rule out neuropathy. On May 9, 2012, Dr. Morgenstern noted significant symptoms of left shoulder pain with decreased range of motion despite the subacromial cortisone injection administered on May 2, 2012. Dr. Morgenstern recommended an updated left shoulder MRI to rule out the possibility of a rotator cuff tear. On May 21, 2012, Dr. Morgenstern continued to recommend a left shoulder MRI. Petitioner was kept off work in May 2012.

In June 2012, Dr. Morgenstern continued to note Petitioner's ongoing left shoulder symptoms. Px15 at 24-29; Rx5 at 24-29. Petitioner underwent a subacromial cortisone injection to the left shoulder on June 8, 2012. On June 20, 2012, Petitioner underwent an EMG/NCV which was essentially unremarkable. It was noted that there was no evidence of left cervical radiculopathy or peripheral entrapment neuropathy present. It was noted that although the study showed no evidence of a left cervical radiculopathy or neuropathy within the major motor and sensory nerves, the presence of possible irritation to smaller sensory nerve branches in areas subject to trauma was not ruled out. On June 29, 2012, Dr. Morgenstern recommended continued physical therapy, as well as a functional capacity evaluation ("FCE"). Petitioner was kept off work in June 2012. Petitioner testified that she had a bad reaction to the cortisone injections. Tr. at 56, 58.

Petitioner continued to follow up with Dr. Morgenstern through 2012. Px15 at 30-36; Rx5 at 30-36. Dr. Morgenstern continued to note Petitioner's ongoing left shoulder symptoms, including weakness and discomfort of the left shoulder with rotation and movement above shoulder-level. Dr. Morgenstern recommended continued physical therapy. On September 10, 2012, Dr. Morgenstern noted that Petitioner was participating in work conditioning but continued with left shoulder discomfort. Dr. Morgenstern reviewed the work conditioning note and disagreed that Petitioner was able to lift more than 20 pounds on a continuous basis. Petitioner was given restrictions of light duty work with no lifting more than five pounds with the left upper extremity and no commercial bus driving as she continued in the work conditioning program. On October 22, 2012, Dr. Morgenstern noted that at that time, upon no approval of therapy, Petitioner was a candidate for an FCE. Petitioner's work restrictions were maintained. On November 26, 2012, Dr. Morgenstern recommended an updated left shoulder MRI to rule out further pathology within the shoulder joint. Dr. Morgenstern noted that in addition to Petitioner's previous work restrictions, Petitioner should also work indoors due to the inclement weather affecting her pain symptoms in the left upper extremity. On December 5, 2012, Dr. Morgenstern continued to recommend an up-to-date FCE and updated MRI of the left shoulder.

Petitioner again saw Dr. Morgenstern on January 9, 2013. Px1 at 171; Px15 at 37; Rx5 at 37. Dr. Morgenstern noted that Petitioner continued with discomfort and weakness of the shoulder, particularly with rotation and movement of the shoulder above shoulder level. Dr. Morgenstern noted that Petitioner was a candidate for an updated MRI of the left shoulder. Petitioner was kept off work.

Petitioner saw Dr. Morgenstern on February 13, 2013. Px1 at 170; Px15 at 39; Rx5 at 39. Dr. Morgenstern noted that Petitioner continued with discomfort and decreased range of motion of the left shoulder. Dr. Morgenstern noted that Petitioner had an FCE that demonstrated that her results were inconsistent due to the pain and symptoms of the left shoulder. Petitioner was referred to Dr. Silver for further treatment and evaluation of the left shoulder. Dr. Morgenstern noted that Petitioner had been approved for additional therapy, and that she would remain off work while attending therapy.

Petitioner was kept off work on April 12, 2013. Px1 at 259.

On March 13, 2013, Petitioner saw Dr. Silver. Px1 at 3-4, 258. On exam of the left shoulder, Dr. Silver noted crepitation in the glenohumeral joint, 80-degree forward flexion, 40-degree lateral abduction with no internal rotation, and positive impingement, Hawkins, and drop arm tests. Dr. Silver noted that Petitioner's x-rays revealed bone-on-bone changes in the glenohumeral joint with complete loss of the articular cartilage joint space. Dr. Silver's impression was that Petitioner had some degree of preexisting arthritis in the left shoulder that was asymptomatic prior to the accident and was severely exacerbated and accelerated by the accident, causing Petitioner to lose the ability to use her left arm. Dr. Silver noted that Petitioner would require hemiarthroplasty of the left shoulder. Dr. Silver noted that he did not think that further therapy was indicated, and Petitioner's problem was surgical at that time. Petitioner was kept off work. Petitioner testified that at the time of her initial visit with Dr. Silver, she could not move her arm, and that after the surgery with Dr. Morgenstern, "it felt like something was sticking me in it," her arm was burning and tingling, and that she was losing strength. Tr. at 61. Petitioner testified that she also could not move her neck or perform daily tasks and functions. Tr. at 61-62.

Petitioner returned to Dr. Silver on April 12, 2013, at which time Dr. Silver noted that Petitioner's left shoulder continued to do poorly and that her examination remained unchanged. Px1 at 5, 257. Dr. Silver continued his surgical recommendation. Petitioner was kept off work.

On April 29, 2013, Petitioner underwent a left shoulder humeral hemiarthroplasty. Px1 at 7-8. Petitioner's postoperative diagnosis was end-stage osteoarthritis of the left shoulder. Petitioner testified that she got a frozen shoulder again after the second surgery. Tr. at 66-67, 68.

Petitioner followed up with Dr. Silver on May 10, 2013. Px1 at 925-256. Dr. Silver noted that Petitioner was doing well 10-days postoperatively and that she would start physical therapy. Petitioner was kept off work.

Petitioner returned to Dr. Silver on June 19, 2013. Px1 at 10, 254. Dr. Silver noted that Petitioner had regained almost 90-degrees of lateral abduction and forward flexion postoperatively. Dr. Silver noted that Petitioner would continue therapy and use of the passive motion machine. Petitioner was kept off work.

Petitioner next saw Dr. Silver on July 24, 2013, at which time Dr. Silver noted that Petitioner had regained 130-degrees of active forward flexion and 160-degrees of passive forward flexion. Px1 at 11, 251-252. He noted that Petitioner would continue physical therapy. Petitioner was kept off work.

On August 28, 2013, Dr. Silver noted that x-rays of the left shoulder demonstrated excellent position and alignment of the hemiarthroplasty. Px1 at 191. Petitioner was restricted to right-handed work only. Px1 at 249-50

On September 25, 2013, Dr. Silver noted that Petitioner's recovery had been slow and that she required Norco and Terocin patches. Px1 at 12.

Petitioner again saw Dr. Silver on September 27, 2013. Px1 at 13, 247. Dr. Silver noted that Petitioner had regained 160-degrees of active forward flexion and lateral abduction. He noted that Petitioner would continue therapy. He also noted that Petitioner may use her left arm below shoulder-level with a two-pound lifting restriction.

Petitioner followed up with Dr. Silver on November 1, 2013. Px1 at 14, 246. Dr. Silver noted that Petitioner had regained approximately 170-degrees of active forward flexion. Dr. Silver noted that Petitioner would continue physical therapy, and that Petitioner was at a four-to-five-pound lifting restriction and was unable to drive a bus.

On December 11, 2013, Dr. Silver noted that Petitioner had plateaued in therapy with 170-degrees of forward flexion and 110-degrees of lateral abduction. Px1 at 15, 245. Dr. Silver recommended a six-week work conditioning program. Petitioner's restrictions were maintained. Petitioner followed up with Dr. Silver on January 15, 2014 and February 19, 2014, at which time she was still participating in a work conditioning program. Px1 at 16-17, 382-383. Petitioner was kept off work.

Petitioner attended 19 sessions of physical therapy between July 22, 2013 and December 13, 2013 at Advanced Physical Medicine Centers, S.C. Px1 at 203-207, 210. Petitioner attended nine sessions of work conditioning at Advanced Physical Medicine Centers, S.C. between December 20, 2013 and February 12, 2014. Px1 at 208-209, 211.

Petitioner returned to Dr. Silver on March 28, 2014. Px1 at 22, 380. Dr. Silver noted that Petitioner's left shoulder demonstrated 170-degrees of forward flexion and 110-degrees of lateral abduction, and that her impingement and Hawkins tests were slightly positive. Dr. Silver recommended a FCE and prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin cream and patches. Petitioner was kept off work.

Petitioner underwent an FCE on April 2, 2014 at Advanced Physical Medicine. Px1 at 309-313. Petitioner demonstrated capabilities of assuming a position in the sedentary strength category.

Petitioner next saw Dr. Silver on May 2, 2014. Px1 at 23, 379. Dr. Silver noted that Petitioner had completed her FCE, and that she did not meet the requirements to return to work as a bus driver. Dr. Silver noted that Petitioner's capabilities and permanent restrictions were lifting and carrying two to three pounds at a time and that she could not perform her driving duties in a full-time manner whatsoever. Dr. Silver prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin cream and patches.

Petitioner followed up with Dr. Silver on June 13, 2014, at which time Dr. Silver noted that Petitioner's status quo remained unchanged. Px1 at 24, 364-365. Dr. Silver noted that Petitioner had 120-degree lateral abduction and 140-degrees of forward flexion. Dr. Silver noted that Petitioner had severe weakness at a 4- level for forward flexion, lateral abduction, and internal and external rotation. Petitioner's permanent restrictions were maintained, and she was prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin patches and cream.

Petitioner saw Dr. Silver on July 18, 2014, at which time Dr. Silver noted that Petitioner had regained 160-degrees of forward flexion with 120-degrees of lateral abduction. Px1 at 25, 362-363. He noted that Petitioner's weakness remained at a 4- level with regard to forward flexion, lateral abduction, and internal and external rotation. Petitioner's permanent restrictions were maintained. Dr. Silver prescribed Meloxicam, Protonix, Hydrocodone, Ultram, Terocin cream and patches, and a topical medication for scar reduction and wound care.

On September 5, 2014, Dr. Silver noted that Petitioner still had pain in the left shoulder, as well as weakness. Petitioner's permanent restrictions were maintained. Px1 at 266, 360-361.

Petitioner returned to Dr. Silver on February 6, 2015. Px1 at 28, 27. Petitioner was seen for left and right shoulder complaints. Dr. Silver noted that Petitioner had right shoulder pain which had been ongoing for approximately eight months. Dr. Silver noted positive impingement, Hawkins, and drop arm tests on examination of the right shoulder. Dr. Silver noted that the right shoulder pain had been resistant to anti-inflammatory and pain medications, and that it was affecting activities of daily living. Dr. Silver noted that his concern regarding the right shoulder was rotator cuff impingement with possible tearing. A right shoulder MRI was ordered. Regarding the left shoulder, Dr. Silver noted that Petitioner had some increasing pain with weakness remaining at a 4- level. Dr. Silver noted that her motion was reduced to 140-degrees of forward flexion and 100-degrees of lateral abduction. Petitioner's permanent restrictions were unchanged. Petitioner was prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin cream and patches.

Petitioner underwent a right shoulder MRI at Progressive Radiology on February 23, 2015, which demonstrated: (1) moderate to severe degenerative changes at the glenohumeral joint space with diffuse degenerative tearing of the glenoid labrum, (2) severe tendinopathy and probable tearing of the intra-articular biceps tendon, (3) supraspinatus tendinopathy with a tiny linear (pinhole type) intermediate to high-grade bursal surface tear, with no tendon retraction or muscle atrophy identified, (4) os acromiale, as well as degenerative changes at the acromioclavicular joint with mild encroachment upon the underlying supraspinatus myotendinous junction, with both findings noted as sites that could service an impingement. Px1 at 104-105.

On February 25, 2015, Dr. Silver noted that he and Petitioner had reviewed her right shoulder MRI scan and had discussed a shoulder hemiarthroplasty. Px1 at 29.

On May 8, 2015, Dr. Silver noted that Petitioner's left shoulder was deteriorating, and that her motion was at 110-degrees of forward flexion and lateral abduction, with positive impingement, Hawkins, and drop arm tests. Px1 at 30. Dr. Silver noted that Petitioner's symptoms were a continuation of the work accident, and that Petitioner had recurrence of rotator cuff impingement postoperatively with some degree of adhesive capsulitis. Dr. Silver recommended an MRI, and prescribed Meloxicam, Protonix, Hydrocodone, and Ultram.

Petitioner underwent a left shoulder MRI without contrast on September 8, 2015 at Progressive Radiology, which demonstrated: (1) limited study due to extensive susceptibility artifact resulting from surgical hardware, (2) no definite rotator cuff tear identified with limits of the susceptibility artifact, and (3) os acromiale. Px1 at 1-2.

Petitioner saw Dr. Silver on September 16, 2015. Px1 at 32. Dr. Silver noted that Petitioner's left shoulder continued to do poorly with pain at 90-degrees of forward flexion and lateral abduction, as well as positive impingement, Hawkins, and drop arm tests. Dr. Silver noted that the MRI had significant artifact in the presence of the hemiarthroplasty. Dr. Silver noted that Petitioner's pain had been resistant to physical therapy, anti-inflammatories, and pain medication. Dr. Silver noted a cortisone injection had not been administered because of the presence of the hemiarthroplasty. Dr. Silver noted that Petitioner required arthroscopic surgery of the left shoulder for rotator cuff impingement. Petitioner was prescribed Meloxicam, Protonix, Hydrocodone, and

Ultram. Petitioner was kept off work. Px1 at 77. Petitioner testified that the recommended surgery was initially authorized, but then was cancelled and denied the day of. Tr. at 72-73. Petitioner testified that physical therapy was also denied around this time. Tr. at 74, 75.

Petitioner was kept off work on October 21, 2015. Px1 at 72.

Petitioner was kept off work on December 5, 2015. Px1 at 67.

Petitioner was kept off work on January 30, 2016. Px1 at 66.

Petitioner was kept off work on March 16, 2016. Px1 at 65.

On April 16, 2016, Dr. Silver noted that authorization for Petitioner's left shoulder arthroscopy had been withdrawn. Px1 at 34. Dr. Silver noted that Petitioner was in severe pain. Dr. Silver noted that Petitioner's examination demonstrated 100-degrees of forward flexion and lateral abduction with positive impingement and Hawkins tests. Petitioner was prescribed Meloxicam, Protonix, Hydrocodone, and Ultram.

Petitioner was kept off work on April 27, 2016. Px1 at 64.

On June 8, 2016, Dr. Silver noted that Petitioner's left shoulder examination demonstrated 100-degrees of forward flexion and 70-degrees of lateral abduction, as well as positive impingement and Hawkins tests. Px1 at 36, 273. Dr. Silver noted Petitioner's pain was severe and affecting all of her activities. Dr. Silver noted that right shoulder x-rays demonstrated end-stage degenerative change with bone-on-bone changes. Dr. Silver prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin patches. Petitioner was kept off work. Px1 at 62-63.

On July 20, 2016, Dr. Silver noted that Petitioner's pain continued to be severe and caused difficulties with activities of daily living. Px1 at 38-39. Dr. Silver noted that Petitioner's left shoulder symptoms had caused stress on her right shoulder, and that Petitioner was having severe right shoulder pain. Dr. Silver noted that examination of the left shoulder demonstrated 100-degrees of forward flexion and 70-degrees of lateral abduction, as well as positive impingement and Hawkins tests. Dr. Silver prescribed Meloxicam, Protonix, Hydrocodone, Ultram, and Terocin patches.

Petitioner was kept off work on August 31, 2016. Px1 at 61.

Petitioner was kept off work on October 7, 2016. Px1 at 60.

Petitioner was kept off work on November 18, 2016. Px1 at 59.

Petitioner was kept off work on February 10, 2017. Px1 at 155.

Dr. Silver noted continued severe pain in Petitioner's left shoulder on May 5, 2017 and June 14, 2017. On June 14, 2017, Dr. Silver noted that due to the over-use of the right shoulder, Petitioner had exacerbated and accelerated preexisting asymptomatic degenerative changes of the right shoulder and was in severe pain. Dr. Silver noted that Petitioner's motion was "almost nil" with regard to the right shoulder at 45-degrees of forward flexion and lateral abduction with positive impingement and Hawkins tests. Dr. Silver noted that Petitioner's left shoulder demonstrated limited range of motion on forward flexion and lateral abduction, as well as positive impingement and Hawkins tests. Petitioner was kept off work. Px1 at 156, 166-167.

On August 2, 2017, Petitioner saw Dr. Howard Freedberg at Suburban Orthopedics for complaints of bilateral shoulder and neck pain. Px7¹ at 121-124. Regarding the left shoulder, Petitioner reported throbbing and achy pain radiating to the elbow. She reported that she was unable to hold heavy objects with her left hand due to weakness to her arm and shoulder. Regarding the right shoulder, Petitioner reported that she had pain when applying pressure and when lying on her shoulder. Petitioner reported feeling a lump to her right shoulder. Regarding the neck, Petitioner reported that the pain could be intense and that she had headaches at times. She reported trouble with movement to her neck and that she was unable to look down or lean forward without experiencing neck pain. Petitioner reported limited range of motion of her shoulders. X-rays of the left shoulder were obtained and were normal. Dr. Freedberg's impression was left painful hemiarthroplasty. Petitioner was kept off work and it was noted that she would follow up with Dr. Ankur Chhadia.

On August 4, 2017, Dr. Silver noted that Petitioner had been weaned to a low dose of Norco for pain, and that he was prescribing topical lidocaine and Voltaren. Px1 at 41-43. Petitioner was kept off work. Px1 at 156, 166-167.

Petitioner saw Dr. Ankur Chhadia at Suburban Orthopedics on August 16, 2017. Px7 at 102-106. Petitioner reported that her left shoulder was worse than the right shoulder, and that she was having neck pain that radiated into the back of the head, as well as headaches a couple of times a week. X-rays of the left shoulder were obtained and demonstrated severe degenerative changes of the glenoid with severe joint space narrowing. Dr. Chhadia's impression was left shoulder hemiarthroplasty with erosion onto glenoid and degenerative joint disease of the glenoid. A CT scan of the left shoulder was ordered. Surgery was recommended. Petitioner was kept off work. Petitioner testified that she was still having left shoulder problems when she saw Dr. Chhadia, and that the pain was worse and that she lost motion and range. Tr. at 84.

Petitioner underwent a left shoulder CT scan on August 23, 2017 at Premiere Imaging & Open MRI which demonstrated (1) no acute abnormality or specific abnormality of the left shoulder prosthesis identified and (2) incidental non-united os acromiale. Px7 at 98.

Dr. Silver noted continued severe pain, as well as limited and painful range of motion of the left shoulder and right shoulder on September 15, 2017. Px1 at 45-49, 51-53. Dr. Silver continued to recommend a left shoulder arthroscopic surgery for rotator cuff impingement.

Petitioner returned to Dr. Chhadia on September 19, 2017, at which time he continued to recommend a left total shoulder arthroplasty. Px7 at 91-95. Petitioner was kept off work. Petitioner testified that at the time of the September 19, 2017 visit, she was losing more motion and range, and the pain was worse. Tr. at 89. Petitioner testified that she could not lift her arm. Tr. at 89-90.

Dr. Silver noted continued severe pain, as well as limited and painful range of motion of the left shoulder and right shoulder on October 13, 2017, November 17, 2017, December 29, 2017, February 7, 2018, March 21, 2018, May 2, 2018, and June 15, 2018. Px1 at 45-49, 51-53. Dr. Silver continued to recommend a left shoulder arthroscopic surgery for rotator cuff impingement. Petitioner was kept off work. Px1 at 157-160, 163-165, 440. Petitioner testified that at the time she last saw Dr. Silver, she was still experiencing a frozen shoulder and could not raise her arm. Tr. at 80. Petitioner testified that she was also experiencing right shoulder symptoms, which she told Dr. Silver about towards the end of her treatment with Dr. Silver. Tr. at 80, 81. Petitioner testified that she first complained of right shoulder symptoms in 2015. Tr. at 87.

¹ Petitioner's Exhibit 7 consists of records from Suburban Orthopedics. The Arbitrator notes that some sections of the records are not legible as copied.

Petitioner testified that she did not treat with Dr. Chhadia for a year or year and half because she moved to Las Vegas to be in the sun, so that she could heal and not feel the pain she felt from the cold air. Tr. at 91-92. Petitioner testified that during her time in Las Vegas, her left shoulder pain was minimized and not as intense, however, she still felt pain. Tr. at 92. Petitioner testified that she was also having right shoulder pain during this time. Tr. at 92. On cross examination, Petitioner testified that she did not receive any treatment to her left or right shoulders, neck, or back while in Las Vegas. Tr. at 135-136. Petitioner did not work in any capacity while in Las Vegas. Tr. at 136. Petitioner did not receive physical therapy or medications for any condition while in Las Vegas. Tr. at 157. Petitioner did a lot of walking and soaking in the pool while in Las Vegas. Tr. at 165.

On December 11, 2019, Petitioner saw Dr. Freedberg for complaints of bilateral shoulder and neck pain. Px7 at 81-84. Petitioner reported that she had been experiencing more pain and stiffness in the bilateral shoulders since her last visit. Petitioner reported that she had moved to Las Vegas hoping that the weather would help with her pain, which it did not, and she had moved back to Chicago. Petitioner reported that the right shoulder was bothering her the most. Petitioner reported that the pain in the right shoulder radiated down her right arm and that she had some weakness in her right arm. Dr. Freedberg's impressions were left pain hemiarthroplasty and right shoulder glenohumeral joint degenerative joint disease compensatory to the left side. A right shoulder MRI was recommended. It was noted that Petitioner would follow up with Dr. Chhadia.

Petitioner underwent a right shoulder MRI on December 19, 2019 at Skokie Open MRI which demonstrated (1) findings suggestive of at least a partial tear of the supraspinatus tendon, if not a complete small full thickness rotator cuff tear, with an MR arthrogram recommended for further evaluation, (2) AC hypertrophic spurring with impingement, and (3) some paralabral cystic changes, suggesting paralabral cysts. Px7 at 77-78.

Petitioner returned to Dr. Chhadia on January 21, 2020. Px7 at 63-67. Petitioner reported worsening symptoms. Petitioner reported constant neck pain and denied radiating neck pain. Petitioner reported constant bilateral shoulder pain, and that the right shoulder pain radiated to her neck and to her elbow. Petitioner denied radiating left shoulder pain. Petitioner reported numbness and tingling in her right arm and right hand. Dr. Chhadia's impressions were left painful hemiarthroplasty and right shoulder glenohumeral joint degenerative joint disease compensatory to the left side. Dr. Chhadia recommended a right reverse total shoulder arthroplasty. Petitioner was kept off work.

Petitioner again saw Dr. Chhadia on August 4, 2020. Px7 at 49-53. Petitioner presented for follow up of the bilateral shoulders. Petitioner reported increased pain since her last visit. Dr. Chhadia noted that Petitioner continued with constant neck pain radiating down the bilateral shoulders and arms. Petitioner reported that she had to sit forward due to the neck and bilateral shoulder pain. Petitioner reported that the left shoulder pain radiated into her left thumb, and that she experienced numbness and tingling in the left thumb, right shoulder, right elbow, and right thumb. Dr. Chhadia's diagnoses and surgical recommendation were unchanged. Petitioner was kept off work.

On November 13, 2020 and February 8, 2021, Petitioner saw Keith Welker, PA-C, at Suburban Orthopedics for complaints of bilateral shoulder and neck pain. Px7 at 31-35, 22-26. Petitioner reported numbness and tingling in the bilateral hands. Petitioner's diagnoses and surgical recommendation were unchanged. Petitioner was kept off work. On cross examination, Petitioner testified that she may have taken a fall in February 2021, and that she may have mentioned it to Dr. Chhadia, but she did not recall reporting more neck pain or neck-cracking sensations after the fall. Tr. at 148-149.

Petitioner again saw Dr. Chhadia on March 8, 2021. Px7 at 6-10. Petitioner's bilateral shoulder and neck pain complaints continued. Petitioner continued to report numbness and tingling in the bilateral hands. Dr. Chhadia's diagnoses and surgical recommendation were unchanged. Dr. Chhadia noted that Petitioner would inevitably

require surgery for the diagnoses of right shoulder glenohumeral joint degenerative disc disease, however, Petitioner was unable to undergo the recommended right reverse total shoulder arthroplasty at that time due to other medical issues and because she did not have help or support to recover from the procedure. Dr. Chhadia noted that Petitioner was at maximum medical improvement ("MMI"). Petitioner was kept off work.

Petitioner testified that she last saw Dr. Chhadia in October 2021 and that she was still symptomatic to the left shoulder. Tr. at 94-95. There is no record within Px7 for an October 2021 visit with Dr. Chhadia.

On cross examination, Petitioner testified that she has not undergone surgery for the right shoulder. Tr. at 126-127. Petitioner has also not undergone the recommended surgery for the left shoulder. Tr. at 127. Petitioner agreed that she did not want to proceed with either surgery because there may be a shortening of her arms as a result of the surgeries. Tr. at 127.

Vocational Efforts/Rehabilitation

Petitioner testified that she had to send in job search logs to Respondent at some point, and that she sent job search logs to Respondent for about six months. Tr. at 100. Petitioner testified that Respondent required only the job search logs. Tr. at 101. Petitioner never did a vocational evaluation for Respondent and was not instructed to. Tr. at 101. Petitioner was not ever instructed by Respondent to have vocational training or to job search at its facility. Tr. at 101-102. Petitioner was terminated by Respondent in 2016. Tr. at 103-104. Petitioner testified that she was not called by Respondent to participate in vocational training or a vocational evaluation. Tr. at 105. Petitioner did not ever receive an email from Respondent to attend a vocational evaluation or vocational training. Tr. at 105. Petitioner did not ever receive a letter from Respondent to attend a vocational evaluation or vocational training. Tr. at 105-106. Petitioner was not informed by her former attorney that she needed to attend or participate in vocational training or a vocational evaluation. Tr. at 106. Petitioner was not contacted by a third-party company advising her that she needed to be evaluated for vocational training. Tr. at 107.

On cross examination, Petitioner agreed that she was a union employee, and that through her union contract, her understanding was that after a certain period of inactivity, she was no longer guaranteed a job. Tr. at 113-114. Petitioner agreed that when that period expired, she was administratively separated from Respondent. Tr. at 114. Petitioner testified that she was not contacted by Respondent to participate in a vocational rehabilitation program run by Genex. Tr. at 162. Petitioner testified that to her knowledge, Ms. Perkins, from Human Resources, did not reach out to her and ask her to participate in Wheels in Motion. Tr. at 163. Petitioner testified that she knew of no one that participated in Respondent's Wheels in Motion program. Tr. at 163. Petitioner is not proficient on computer activities and does not use a lot of computers because it hurts her arms. Tr. at 170. When asked if she had looked for any other alternative employment besides what is reflected in the job search logs, Petitioner responded that she wanted to return to school. Tr. at 170.

Current Condition

Petitioner worked light duty at Respondent after the second surgery for about six months. Tr. at 70-71. On cross examination, Petitioner agreed that she returned to work for only two months while treating with Dr. Morgenstern and did not return to work while treating with Dr. Silver. Tr. at 122-123, 125-126. Petitioner was paid for the period that she returned to work. Tr. at 126.

Petitioner testified that she has pain on a daily basis. Tr. at 46, 97. Petitioner testified that she continues to have left shoulder problems. Tr. at 96. Petitioner testified that her left shoulder symptoms are worse when the weather is wet or damp. Tr. at 97. Petitioner continues to have left and right shoulder pain. Tr. at 98, 107.

Petitioner testified that her nephews carry her groceries. Tr. at 96. Petitioner testified that she does not take baths anymore, and that she takes showers because she cannot pull herself out of the bathtub. Tr. at 96, 109. Petitioner has difficulty sleeping because of the pain in both of her shoulders. Tr. at 97, 98. Petitioner has difficulty with basic everyday things, including putting her clothes on. Tr. at 98-99. Petitioner testified that it has been a while since she has had neck or head pain. Tr. at 108. Petitioner can no longer assist her mother. Tr. at 108. Petitioner can no longer go to the gym. Tr. at 109. Petitioner wants a healthy life. Tr. at 109-110. Petitioner applied for Social Security disability benefits in 2016, 2017, or 2018. Tr. at 99.

On cross examination, Petitioner testified that the most strenuous activity she does at present, is go up and down the stairs. Tr. at 136. Petitioner explained that she lives on the second floor. Tr. at 136. Petitioner testified that she complied with the restrictions given to her by her doctors. Tr. at 143. Petitioner testified that she believed she was awarded social security disability benefits in 2018, prior to moving to Las Vegas. Tr. at 150. Petitioner testified that since the date of the accident, she has not been involved in any other falls. Tr. at 167. Petitioner testified that she was involved in a motor vehicle accident in 2024. Tr. at 167. Petitioner testified that at the time of arbitration, she did not have an appointment scheduled with Dr. Chhadia. Tr. at 167. Petitioner testified that at the time of arbitration, her left shoulder was frozen, she could raise it only 70 to 80 degrees, and she has pain. Tr. at 168. Petitioner testified that she cannot use her left arm above shoulder-level. Tr. at 168.

Testimony of Patrick Conway

Respondent called Patrick Conway (“Conway”) as its witness. Tr. at 174. Conway is a vocational case manager and has been employed by Genex for 22 years. Tr. at 174. Conway’s duties as a vocational case manager include providing job search assistance to people referred to him who have suffered a workers’ compensation injury. Tr. at 175.

Conway was employed by Genex in 2015. Tr. at 176. At that time, Genex serviced accounts pertaining to Respondent for vocational rehabilitation services. Tr. at 176. Conway was retained to provide job search assistance to Petitioner and others in 2015. Tr. at 177. Conway was involved in Respondent’s vocational rehabilitation program, Wheels in Motion. Tr. at 178. The services rendered under Wheels in Motion took place at Respondent’s headquarters. Tr. at 178. Under the Wheels in Motion program, Conway met with Respondent’s employees whose cases he was assigned, he would obtain information from the administrator of the program, he would obtain information from Respondent’s personnel, and he provided additional job search assistance beyond what the administrator of the program was providing. Tr. at 179.

Conway testified that the first step of the Wheels in Motion program was a letter sent by Respondent to the individual advising the individual that they would begin participating in the program. Tr. at 179-180. Other coworkers did not report to Conway about the activities performed by the program participants. Tr. at 181. The person running the program would provide Conway with information regarding any progression by the participating individual. Tr. at 181. There was an orientation session for participation in the Wheels in Motion program. Tr. at 181-182. Participants in the program were expected to attend four days a week and avail themselves of the services that were being offered such as computer instruction, signing up for job search engines, using the computer for job search interview preparation, interview training skills, advice on how best to dress for an interview, and other job-seeking skill instruction. Tr. at 182-183. The participants would have to be present for half a day, four days a week. Tr. at 183. The Genex employee that ran the program kept attendance records, and Conway would rely on those records to determine how far along a participant was progressing in the program. Tr. at 183-184.

Conway testified that Petitioner was assigned to his caseload as a participant in the Wheels in Motion program in 2015. Tr. at 184. Conway testified that as a part of the program, a coworker of his was deemed the

administrator of the program, and each of the attendees was assigned a case manager, like himself, to provide one-on-one job search assistance and monitor the individual's progress in the program. Tr. at 186. Conway believed that Petitioner was to appear for her initial orientation for the Wheels in Motion program in June or July 2015. Tr. at 186. Conway did not reach out to Petitioner prior to her orientation date. Tr. at 186. Petitioner would have been advised by Respondent's personnel of the orientation. Tr. at 187. Regarding whether he had any communication with Petitioner at any time, Conway testified that he believed it may have just been the carbon copying on any of the reports that he did. Tr. at 187. Conway did not recall specific dates that Petitioner was to participate in or set up any one-on-one counseling. Tr. at 187. After reviewing his reports, Rx14, Conway testified that on July 6, 2015, he reviewed paperwork indicating that Petitioner was an individual he would be working with and providing one-on-one job search assistance to. Tr. at 188. Conway did not recall the date that Petitioner was to first present for the program. Tr. at 188. Conway prepared the reports within Rx14 in the ordinary course of business regarding his case assignment to provide vocational rehabilitation services to Petitioner. Tr. at 190. Conway then testified that Petitioner was to initially present for the program on July 14, 2015. Tr. at 191. Conway testified that he did not have any objectives as to what to instruct or do with Petitioner when she presented. Tr. at 191. Conway did not recall whether he was present at Respondent's headquarters on July 14, 2015, but testified that he may have been if he was seeing other individuals. Tr. at 191-192. Conway did not recall meeting with Petitioner in July and August 2015. Tr. at 192. It was Conway's understanding that Petitioner did not attend or present to the Wheels in Motion program in July or August 2015. Tr. at 192. Conway testified that his reports would not have stated what the day-to-day activities were and that there would have been general objective or plans that he had. Tr. at 192-196. Petitioner's file was closed on August 12, 2015. Tr. at 196. Conway testified that besides the expected attendance at the Wheels in Motion program, he would send job leads to the individual via a job lead letter weekly. Tr. at 196. Conway was sending Petitioner job leads regardless of Petitioner not attending the program. Tr. at 196. Conway did not receive a response from Petitioner regarding the job search leads. Tr. at 197. Conway did not recall under what heading he would have sent the job search leads on to Petitioner. Tr. at 199. The job search leads would have been sent by his office via regular mail. Tr. at 199. Conway did not recall receiving any returned mail from Petitioner, which would have been documented in his file. Tr. at 199-200.

On cross examination, Conway testified that he had testified before, and that he has always testified on behalf of Respondent. Tr. at 203, 204. Conway agreed that his knowledge of this particular case was contained in his reports. Tr. at 206; Rx14. Conway prepares all of his reports. Tr. at 207. Conway testified that to his recollection, he had not ever talked to Petitioner. Tr. at 211. Conway agreed that he never sent Petitioner any emails. Tr. at 211. Conway testified that there likely were copies of the job search lead letters sent to Petitioner in his file at his home. Tr. at 211-212. Conway did not recall Petitioner sending him any job searches. Tr. at 213. Conway did not know if Petitioner sent job searches to Respondent. Tr. at 213. Conway testified that somebody from Respondent would have sent Petitioner information regarding the Wheels in Motion program. Tr. at 215. Conway did not have any information regarding what information was sent to Petitioner regarding the Wheels in Motion program by Respondent. Tr. at 215. Conway testified that the reference of "The [Respondent's] attorney handling the case has advised me that legal discussions have taken place on [Petitioner's] case in the July 29, 2015 report, which may impact her involvement in the program," means that there might have been a reason that Petitioner would not be continuing in the program. Tr. at 215-216. Conway agreed that Petitioner's case was closed because of "legal proceedings." Tr. at 217-218.

On redirect examination, Conway agreed that Petitioner did not attend any dates for the Wheels in Motion program before he closed the file. Tr. at 218. Conway testified that the reference of "Closure letter written to [Petitioner]" in the August 12, 2015 report, meant that a letter was sent to Petitioner indicating that he planned on closing his file. Tr. at 221.

Section 12 Examination Reports by Dr. Ira B. Kornblatt

Dr. Kornblatt performed a Section 12 examination of Petitioner on October 10, 2012. Px17; Rx7. Dr. Kornblatt noted that Petitioner reported that she was considerably improved and that she would like to return to her job as a bus operator. Dr. Kornblatt also noted that Petitioner had ongoing complaints of discomfort, for which she took Tramadol and intermittent ibuprofen, as well as complaints of ongoing loss of motion of the left shoulder. Dr. Kornblatt noted a normal cervical spine examination. Dr. Kornblatt noted limited mobility of the left shoulder in all planes, as well as discomfort at the extremes of motion. Dr. Kornblatt did not review the films of the left shoulder MRI of November 30, 2011. Dr. Kornblatt noted that the cervical spine MRI was consistent with a 2-mm central disc protrusion at C6-7 with no significant foraminal narrowing. Dr. Kornblatt obtained x-rays of the left shoulder which demonstrated significant osteoarthritis involving the glenohumeral joint. Dr. Kornblatt did not review the operative report of Dr. Morgenstern. Dr. Kornblatt noted that Dr. Morgenstern's records were consistent with ongoing loss of motion and ongoing pain of the left shoulder, prior to and after surgery. Dr. Kornblatt's diagnosis of Petitioner's current condition was osteoarthritis of the left shoulder, status post left shoulder strain with exacerbation of osteoarthritis. Dr. Kornblatt opined that Petitioner had reached MMI. Dr. Kornblatt noted that Petitioner had ongoing disability, as manifested by loss of motion and pain, and that she would need to continue symptomatic measures, independent exercise program, and analgesic and/or non-steroidal anti-inflammatory medication. Dr. Kornblatt opined that Petitioner had preexisting osteoarthritis of the left shoulder, noting that Petitioner claimed to be asymptomatic prior to the injury. Dr. Kornblatt opined that it would be dangerous for Petitioner to drive a bus in her present state given the loss of motion of her left shoulder. Dr. Kornblatt opined that Petitioner would benefit from a work specific FCE to determine her capabilities regarding her ability to drive a bus and noted that if any restrictions are demonstrated to be necessary, the restrictions would be permanent.

Dr. Kornblatt reexamined Petitioner on May 22, 2013. Px18; Rx8. Dr. Kornblatt's diagnosis of Petitioner's current condition was osteoarthritis of the left shoulder with exacerbation during motor vehicle accident, status post hemiarthroplasty of the left shoulder. Dr. Kornblatt noted that given the history of asymptomatic left shoulder prior to the accident, it was likely that the exacerbation caused Petitioner's ongoing disability and resulted in the need for reconstructive shoulder surgery, and as such the diagnoses were causally related to Petitioner's work activities. Dr. Kornblatt, however, noted that the osteoarthritis was clearly a preexisting problem. Dr. Kornblatt opined that Petitioner would need extensive physical therapy to regain range of motion and strength of the left shoulder following the hemiarthroplasty.

Dr. Kornblatt again examined Petitioner on March 19, 2014. Px19; Rx9. Dr. Kornblatt opined that Petitioner was at MMI and not in need of any further treatment. Dr. Kornblatt opined that the treatment Petitioner had received had been appropriate and necessary. Dr. Kornblatt opined that while Petitioner clearly had preexisting osteoarthritis of the left shoulder, she was asymptomatic prior to the injury, and that the injury resulted in a permanent aggravation of the osteoarthritis. Dr. Kornblatt opined that Petitioner current complaints were related to the October 25, 2011 injury. Dr. Kornblatt opined that Petitioner could not safely drive a bus. Dr. Kornblatt noted that the FCE was not available to him, that restrictions would depend on the findings of the FCE, and that it was likely that any restrictions that were demonstrated would be permanent. Dr. Kornblatt opined that Petitioner continued to have significant disability of the left shoulder, which would depend on the findings of the FCE. Dr. Kornblatt did not note any symptom magnification or exaggeration.

Evidence Deposition Testimony of Dr. Gregory P. Nicholson

Dr. Nicholson testified by way of evidence deposition taken on March 27, 2019. Rx12. Dr. Nicholson testified as to his education and credentials as a board-certified orthopedic surgeon with a subspecialty in shoulder and elbow surgery. Rx12 at 5-8.

Dr. Nicholson performed a Section 12 examination relative to Petitioner's left shoulder on March 16, 2016. Rx12 at 5. Dr. Nicholson was in receipt of and reviewed clinical records of an FCE, EMGs, an operative note, and an MRI from 2013. Rx12 at 8. Regarding whether he reviewed any films particular to Petitioner or the 2013 MRI, Dr. Nicholson responded, "We do not have any specific mention of imaging prior to 2013 in this report." Rx12 at 8. Dr. Nicholson testified that the questions he was asked to answer "danced around the issue" of causation. Rx12 at 10. Regarding whether it was a fair statement that he never rendered a causation opinion, Dr. Nicholson responded, "We state that she had preexisting osteoarthritis." Rx12 at 10. Regarding whether there was anything in the records that gave any indication of whether the preexisting osteoarthritic condition in the left shoulder was aggravated or accelerated to the point that Petitioner needed two surgeries, Dr. Nicholson responded "I can't tell you that anything was aggravated or accelerated. We don't talk about that..." Rx12 at 10-11. Dr. Nicholson did not respond to hypothetical questions. Rx12 at 18, 26. Dr. Nicholson obtained x-rays of the left shoulder at the time of his examination, and no negative findings were noted. Rx12 at 19-20. Dr. Nicholson did not recommend an arthroscopy or an arthroplasty, and he opined that a subacromial decompression and distal clavicle resection were not going to substantially relieve Petitioner's pain. Rx12 at 21. Dr. Nicholson opined that Petitioner most likely had glenohumeral joint pain secondary to the fact that it was a hemiarthroplasty, and that one can have glenoid wear and arthrosis. Rx12 at 21. Dr. Nicholson noted that Petitioner had good rotator cuff strength and good motion on examination, and that the arthroscopic operation was not going to substantially change her pain level, functional level, or return her to a different work level. Rx12 at 21. Regarding whether there was anything in his examination indicative of an impingement that necessitated surgery, Dr. Nicholson did not note impingement type pain, rotator cuff pain, or AC joint pain on examination. Rx12 at 21-22. Dr. Nicholson testified that at the time of the Section 12 exam, his opinion was that Petitioner did not have impingement and that Petitioner did not need an arthroscopy, acromioplasty, or an AC joint resection. Rx12 at 22-23. Dr. Nicholson testified that Petitioner was at MMI. Rx12 at 23. Dr. Nicholson opined that Petitioner was not capable of driving a commercial bus and that the restrictions as documented in her FCE were appropriate and permanent. Rx12 at 24. Dr. Nicholson testified that the FCE result indicating that Petitioner was capable of performing at a sedentary level was consistent with his findings. Rx12 at 25. Dr. Nicholson was not provided with the September 8, 2015 MRI. Rx12 at 25-26. Regarding whether he was able to exclude the possibility of progressive glenoid arthrosis based on the x-rays he obtained at the time of his examination, Dr. Nicholson testified that it could not be excluded nor discussed because only one x-ray had been obtained, and that a series of x-rays would need to be obtained over time. Rx12 at 26. Dr. Nicholson testified that it was well-known that hemiarthroplasty had less predictable pain relief than total shoulder arthroplasty. Rx12 at 26-27.

Evidence Deposition Testimony of Dr. Ronald Silver

Dr. Silver testified by way of evidence deposition taken on April 22, 2020. Px5. Dr. Silver testified as to his education and credentials as a board-certified orthopedic surgeon. Px5 at 4-6. Dr. Silver limits his practice to orthopedic surgery of the shoulder and knee. Px5 at 5.

Dr. Silver initially saw Petitioner on March 13, 2013 and he last saw Petitioner on June 15, 2018. Px5 at 7. Petitioner was referred to him by Dr. Morgenstern. Px5 at 7. Petitioner was referred to him because her left shoulder symptoms had persisted and worsened after the February 28, 2012 arthroscopic surgery. Px5 at 8. X-rays of the left shoulder were obtained on March 13, 2013, which revealed a bone-on-bone situation with complete loss of the shoulder joint space. Px5 at 9. Dr. Silver's assessment at that time was that the area had preexisting asymptomatic arthritis in the left shoulder prior to the accident that was severely exacerbated and accelerated by the accident, causing Petitioner to lose the ability to use her left arm. Px5 at 9. Dr. Silver recommended a left hemiarthroplasty. Px5 at 9. The accident caused the need for this surgery. Px5 at 10. A left shoulder hemiarthroplasty replacing the wall of the shoulder was performed on April 29, 2013. Px5 at 11. Dr.

Silver testified that he did not perform a total shoulder replacement because of Petitioner's young age and because his preoperative/intraoperative assessments confirmed that the damage was isolated to the one side of the joint, the humeral head, which was replaced. Px5 at 12. Dr. Silver testified that by August 25, 2013, Petitioner's recovery was slower than hoped and that Petitioner was still in significant pain. Px5 at 15-17. By September 27, 2013, Petitioner was doing better, and she was cleared for imminent work duty with no use of the left arm below the shoulder level and only lifting two pounds. Px5 at 16. Petitioner was doing much better and was advanced to a four to five pounds lifting restriction, but she still could not drive a bus, on November 1, 2013. Px5 at 18. Petitioner was advanced to a work conditioning program on December 11, 2013, because she had plateaued in physical therapy, and she continued in the work conditioning program in January and February 2014. Px5 at 18-19. Dr. Silver reviewed Dr. Kornblatt's IME report of March 19, 2014, and he agreed with Dr. Kornblatt that Petitioner was at MMI at that time. Px5 at 19-20. Dr. Silver also agreed with Dr. Kornblatt's opinions that as a result of the October 25, 2011 injury, Petitioner sustained a permanent aggravation of her preexisting condition and that the treatment she had received was appropriate and necessary. Px5 at 20. In May 2014, Petitioner continued to complain of pain, but she had completed an FCE which indicated that she would permanently be unable to return to work as a bus driver and permanently restricted her to carrying or lifting two to three pounds at a time. Px5 at 23. On February 6, 2015, Dr. Silver testified that Petitioner was showing impingement signs on the left shoulder. Px5 at 27. Dr. Silver also examined the right shoulder on February 6, 2015, and he testified that the right shoulder did not have any relationship with regard to the October 25, 2011 injury at that time. Px5 at 27. Petitioner's left shoulder continued to worsen in May and September 2015. Px5 at 30-31. Petitioner showed positive impingement signs of the left shoulder on September 16, 2015. Px5 at 31. A left shoulder MRI was obtained, and it confirmed that they were dealing with rotator cuff impingement. Px5 at 31-32. Dr. Silver did not perform any cortisone injections because of the presence of the metallic prosthesis and the possibility of causing infection. Px5 at 32. Dr. Silver recommended arthroscopic surgery of the left shoulder on September 16, 2015. Px5 at 32-34. Dr. Silver testified that Petitioner's condition remained quite poor continuously through 2018. Px5 at 34-38, 41-46, 47-49. Petitioner remained off work from her initial visit in 2013 until Dr. Silver last saw her in 2018. Px5 at 40. Dr. Silver testified that Petitioner was not permitted to return to work as a bus driver throughout the time that he saw her. Px5 at 40. Dr. Silver examined the right shoulder on February 7, 2018, and it was continuing to do poorly because Petitioner was having to use her right arm more because she could not use her left arm at all. Px5 at 46. Dr. Silver related the overcompensation of the right shoulder to the October 25, 2011 injury. Px5 at 46.

Dr. Silver testified that as a result of the October 25, 2011 injury, Petitioner sustained damage to the articular cartilage of the shoulder joint resulting in a bone-on-bone situation requiring hemiarthroplasty, which then resulted in postoperative impingement requiring arthroscopy, which was never approved, resulting in a permanent disability for her ability to work in any manner. Px5 at 49-50. At the time of his evidence deposition, Dr. Silver continued to recommend a left shoulder arthroscopy. Px5 at 50-51. Dr. Silver testified that lacking a decompression, Petitioner would continue to have impingement. Px5 at 51. Petitioner would require postoperative physical therapy for an average of six months and medication for postoperative pain and inflammation. Px5 at 51. Dr. Silver testified that as time went on, it became obvious and apparent that Petitioner was suffering from overcompensation pain in the right shoulder due to the left shoulder injury and the delay in obtaining approval of surgical treatment. Px5 at 53-54. Dr. Silver testified that the treatment he rendered to Petitioner from her initial visit on March 3, 2013 until her last visit on June 15, 2018 was reasonable, necessary, and related to the October 25, 2011 injury Px5 at 54, 56.

On cross examination, Dr. Silver agreed that the need for a left shoulder arthroscopy with a decompression was based on clinical examination findings, which demonstrated positive impingement signs. Px5 at 62. Dr. Silver testified that when there is a hemiarthroplasty, an MRI is distorted and is used to tell if the rotator cuff is intact, and when dealing with impingement, it is a clinical diagnosis. Px5 at 62-65. Dr. Silver retired on November 1, 2019. Px5 at 70-71. Dr. Silver did not believe that Petitioner had additional therapy after May 2, 2014 and did not recall if she continued in therapy while waiting for surgical approval. Px5 at 73-74. Dr. Silver agreed that Petitioner was never at 100-percent normal range of motion after her procedures. Px5 at 79. Dr. Silver first documented right shoulder complaints on February 6, 2015. Px5 at 82-83. Dr. Silver's opinion as to the condition and diagnosis of Petitioner's right shoulder as of February 6, 2015 until he last saw her in 2018 was that she had an exacerbation and acceleration of preexisting degenerative changes in the right shoulder due to overcompensation she placed in the right shoulder due to her left shoulder accident and injury. Px5 at 83. Petitioner had no history of any preexisting right shoulder complaints that he was aware of. Px5 at 83. Dr. Silver testified that none of Petitioner's imaging suggested rheumatoid arthritis. Px5 at 86-87. Dr. Silver testified that the permanent lifting restrictions of May 2, 2014 was for both upper extremities. Px5 at 88-89. Dr. Silver testified that Petitioner was unable to do any type of work due to the pain and weakness and limited motion of the arm. Px5 at 92-93. Dr. Silver was unfamiliar with Dr. Nicholson's opinions, as he did not review Dr. Nicholson's IME report. Px5 at 96. Petitioner's lifting capabilities as of June 2018 were "[e]ssentially, nil because of the pain situation and limited motion." Px5 at 103.

Evidence Deposition Testimony of Dr. Ankur Chhadia

Dr. Chhadia testified by way of evidence deposition taken on December 20, 2021. Px6. Dr. Chhadia is board-certified in orthopedic surgery and orthopedic sports medicine, and he testified as to his education and credentials regarding same. Px6 at 5-7.

Petitioner began treating at Suburban Orthopaedics on August 2, 2017. Px6 at 8-9. Petitioner complained of bilateral shoulder pain. Px6 at 10-11. X-rays of the left shoulder taken on August 16, 2017 demonstrated a severe glenoid joint space narrowing with a hemiarthroplasty. Px6 at 12. The x-ray demonstrated that the cartilage on the socket was worn out from rubbing of the metal ball of the hemiarthroplasty. Px6 at 12. Dr. Chhadia recommended a conversion to a full shoulder replacement for the left shoulder on August 16, 2017. Px6 at 14-15. A patient would have permanent restrictions with overhead activity and with lifting in general following a total shoulder replacement. Px6 at 16. The left shoulder CT scan of August 23, 2017 showed the prosthesis and no specific abnormality or fractures. Px6 at 23. On December 11, 2019, Petitioner's right shoulder exam had deteriorated from the previous exam. Px6 at 19. Dr. Chhadia clarified that right shoulder x-rays were obtained on December 11, 2019, not on August 2, 2017, and that they showed glenohumeral joint severe arthritis. Px6 at 20-21. The right shoulder MRI of December 19, 2019 showed a partial tear of the supraspinatus rotator cuff tendon or possible small full thickness tear, some acromioclavicular joint spurring and impingement, and paralabral cysts. Px6 at 21. The December 19, 2019 MRI findings could be consistent with an overcompensation injury. Px6 at 21. Dr. Chhadia recommended a right reverse total shoulder replacement on January 21, 2020. Px6 at 24. Dr. Chhadia continued to recommend a right reverse total shoulder replacement on October 25, 2021. Px6 at 28-29.

Dr. Chhadia opined that Petitioner suffered injuries to the left shoulder requiring arthroscopic surgery with posttraumatic and postsurgical adhesive capsulitis and posttraumatic osteoarthritis development requiring hemiarthroplasty, which resulted in continued persisting pain, impairment, and disability with the glenoid

arthritis requiring Petitioner to live with ongoing pain, impairment, and disability pending a necessary left revision total shoulder arthroplasty, possibly a reverse. Px6 at 29. Dr. Chhadia opined that Petitioner also developed acceleration and aggravation of underlying right shoulder osteoarthritis from overcompensation. Px6 at 29-30. Dr. Chhadia opined that postinjury, Petitioner developed the aggravation of the arthritis of the left shoulder directly as a result of the injury. Px6 at 31. Dr. Chhadia opined that the treatment Petitioner received by himself and Dr. Freedberg of Suburban Orthopedics was reasonable, necessary, and related to the October 25, 2011 injury. Px6 at 31. Dr. Chhadia opined that Petitioner will have some degree of permanent pain in the bilateral shoulders into the future. Px6 at 31-32. The pain may lessen with surgical treatment. Px6 at 32. Petitioner will have pain in the bilateral shoulders for the rest of her life. Px6 at 32. Petitioner will have permanent restrictions to the bilateral shoulder in terms of functional abilities of lifting, pushing, pulling, carrying, and her range of motion. Px6 at 32. Dr. Chhadia opined that Petitioner continued to be medically unable to work as of October 25, 2021. Px6 at 33. Dr. Chhadia was not aware that Petitioner was on disability through Social Security. Px6 at 33. Dr. Chhadia opined that Petitioner would likely have permanent disability, even with surgical treatment. Px6 at 33.

On cross examination, Dr. Chhadia testified that Petitioner would have disability on a permanent basis with her bilateral shoulder function in terms of lifting, reaching, pushing, pulling, carrying, and use of her arms. Px6 at 34-35. Dr. Chhadia is board-certified to perform impairment ratings. Px6 at 35-37. Dr. Chhadia performs Section 12 exams on occasion. Px6 at 36. Dr. Chhadia agreed with the radiologists' interpretation of the left shoulder CT scan in August 2017 and the right shoulder MRI in December 2019. Px6 at 40. Dr. Chhadia testified that glenoid deterioration was present on the August 2017 left shoulder x-ray because it demonstrated that the space between the metal ball of the hemiarthroplasty and the bony glenoid was gone, so there was complete joint space narrowing. Px6 at 44. Dr. Chhadia did not recommend a left shoulder subacromial decompression or a distal clavicle resection. Px6 at 45. Impingement findings can wax and wane. Px6 at 46. The left shoulder CT scan images of August 23, 2017 showed erosion of the glenoid or degenerative joint disease of the glenoid. Px6 at 47-48. Glenoid deterioration can cause positive findings on Neer's and Hawkins tests. Px6 at 50. A negative Neer's and Hawkins impingement test would not change his opinion for a surgery recommendation. Px6 at 50-51. Dr. Chhadia testified that it can be common for people to have right-sided pain if treating for a left-sided problem, where the person is right-side dominant. Px6 at 54-55. Dr. Chhadia testified that numbness and tingling are typically a complaint related to nerve problems or neurologic issues, and that in this case, it could be either a carpal tunnel phenomenon or cervical radiculopathy, given Petitioner's history of neck problems and pain. Px6 at 57. Dr. Chhadia did not diagnose or treat a spine condition. Px6 at 57. Dr. Chhadia had no independent recollection of whether Petitioner treated while she was in Las Vegas. Px6 at 58. Dr. Chhadia reviewed the December 11, 2019 MRI images of the right shoulder and opined that there was erosion consistent with arthritis, which was not documented by the radiologist. Px6 at 61. Dr. Chhadia testified that he could not opine on the structural changes alone in terms of the cause, but he provided opinions of the right shoulder condition which the structural changes are a part of. Px6 at 62-63. Dr. Chhadia agreed that he would not be able to opine as to how longstanding the structural changes in the right shoulder as demonstrated on the MRI existed. Px6 at 63. Dr. Chhadia did not believe an MR arthrogram of the right shoulder was necessary. Px6 at 63. Dr. Chhadia testified that it was possible an arthroscopic procedure could help Petitioner, but at that point, it was probably beyond a good long-term solution for Petitioner where there was a 50-percent chance of a good outcome with just that for her shoulder. Px6 at 64. Dr. Chhadia testified that once arthritis is set in to that degree, arthroscopic surgery is relatively contraindicated as the benefit of it is decreased. Px6 at 64. Regarding Petitioner's complaints on January 21, 2020 of right shoulder pain radiating up the neck and down to the elbow, Dr. Chhadia testified that he believes that Petitioner is having pain from both the shoulder and

cervical spine, but that the shoulder was the more prominent problem. Px6 at 65. Dr. Chhadia testified that when you have a problematic joint adjacent joint for the shoulder, the elbow and neck experience more problems, like compensatory problems. Px6 at 65. Dr. Chhadia testified that there was no indication that the fall, documented in the March 8, 2021 record, injured to a greater extent either of Petitioner's shoulders. Px6 at 68. Dr. Chhadia deemed Petitioner at MMI on March 8, 2021 because she was unable to proceed with surgery. Px6 at 68. Dr. Chhadia testified that Petitioner would be able to probably do occasional use of her arms on a very light basis with no overhead activity. Px6 at 69-70.

Section 12 Examination Report by Dr. Gregory P. Nicholson

Dr. Nicholson reexamined Petitioner on March 30, 2022. Rx11. He examined the bilateral shoulders. Regarding the diagnoses of the bilateral shoulders, Dr. Nicholson noted that (1) at the time of the first IME, he stated that Petitioner had preexisting osteoarthritis of the left shoulder and (2) that the 2019 right shoulder MRI clearly showed advanced osteoarthritis. Dr. Nicholson noted that Petitioner had a hemiarthroplasty with glenoid arthrosis on the left side and advanced osteoarthritis on the right, based on only the one set of 2017 films of the left shoulder and 2019 films of the right shoulder provided for his review, and that these changes had nothing to do with the October 25, 2011 work injury. Dr. Nicholson noted that he had no ability to discuss the right shoulder injury prior to the x-rays and MRI from 2019, and noted that he did not evaluate the right shoulder in 2016. Dr. Nicholson opined that Petitioner's right shoulder complaints were not a result of the October 25, 2011 work injury. Dr. Nicholson noted that Petitioner has osteoarthritis of the right shoulder and that he could not state that it is an aggravation or acceleration, further noting that "[i]t just happens to be osteoarthritis and has nothing to do with her work injury of 2011." Regarding findings from diagnostic imaging of the left shoulder, Dr. Nicholson noted that he did not have any modern films, only the 2017 x-ray, and that Petitioner had a hemiarthroplasty and most likely glenoid arthrosis. Dr. Nicholson opined that clearly, Petitioner required a right reverse total shoulder arthroplasty to provide pain relief and improved function, but that it was not related to a work injury. Regarding the left shoulder, Dr. Nicholson opined that Petitioner would benefit greatly from converting the hemiarthroplasty to a reverse total shoulder arthroplasty, but that at the time of the 2016 IME, Petitioner had a preexisting condition and that there was no specific straight line from a work-related injury in 2011 to needing a hemiarthroplasty in 2015 or reverse shoulder replacement in 2022. Dr. Nicholson opined that the recommended surgery for the right and left shoulders would dramatically reduce pain and increase functionality. Regarding exam changes from March 2016, Dr. Nicholson noted that Petitioner changed limitation of motion, in active and forward elevation, as well as increased pain. Dr. Nicholson opined that Petitioner's right shoulder end-stage osteoarthritis and rotator cuff insufficiency were not related to overcompensation for the left shoulder. Dr. Nicholson opined that the right shoulder had nothing to do with a 12-year time course after an injury in 2011 or having surgery on the left shoulder. Dr. Nicholson opined that Petitioner would benefit from right reverse total shoulder arthroplasty, that she had failed conservative management, and that no further conservative management was going to substantially improve the right shoulder. Regarding whether all the treatment for the bilateral shoulders has been reasonable and necessary, Dr. Nicholson noted that Petitioner did not have a right shoulder injury, she has osteoarthritis of the shoulder, and that on the left shoulder, she had a hemiarthroplasty and that he did not see Petitioner after the hemiarthroplasty, so he could not answer the question. Regarding whether Petitioner was able to work in any capacity, Dr. Nicholson opined that Petitioner might be able to do telephone work, desk work, or computer work, but that she could not do any type of repetitive lifting or reaching activity, and noted that the right shoulder was not due to a work-related issue. Dr. Nicholson noted that an FCE from the period of 2016 or 2017 was not applicable at the time of his 2022 IME. Dr. Nicholson noted that it would take nine to 12 months to reach MMI following a

reverse total shoulder arthroplasty. Dr. Nicholson opined that without surgery, Petitioner was going to be significantly compromised in both shoulders.

Evidence Deposition Testimony of Laura Belmonte

Petitioner's vocational expert, Laura Belmonte ("Belmonte"), testified by way of evidence deposition on January 11, 2024. Px9. Belmonte testified as to her education and credentials as a certified rehabilitation counselor. Px9 at 4-9.

Belmonte prepared a Vocational Rehabilitation Report dated May 26, 2022. Px9 at 9-10. Belmonte first met with Petitioner on February 11, 2022. Px9 at 10. Belmonte conducted a vocational evaluation of Petitioner via Zoom. Px9 at 10-23. Belmonte also reviewed medical records in preparation of her vocational rehabilitation report. Px9 at 24-27. Belmonte testified that at the time she met Petitioner, Petitioner was 60 years of age, and that individuals in the vocational world who are closely approaching retirement age or are at retirement age, will have difficulty with vocational reorientation. Px9 at 28. Belmonte testified that older people who are nearing retirement age or are at retirement age usually have trouble learning a new job and adapting to a new job. Px9 at 28. Belmonte testified that while Petitioner held a high school diploma and a certificate in business administration, she never held a job that required her to demonstrate a high school level ability in reading, reading comprehension, writing, grammar, or spelling. Px9 at 28-29. Belmonte testified that another situational factor was that Petitioner had only worked in two occupations, as a mail carrier and as a bus driver, which required a certain amount of physical work, and neither provided her any clerical, administrative, sales, marketing, or supervisory skills. Px9 at 29-30. Belmonte testified that Petitioner's work as a mail carrier and bus driver did not offer her much in the way of skill set. Px9 at 30. Belmonte testified that Petitioner had been out of work for 11 years at the time of her evaluation. Px9 at 30. Belmonte used the restrictions from the FCE for her vocational rehabilitation report. Px9 at 30-32. Belmonte did a transferable skills analysis, and the results told her that Petitioner had no transferrable skills. Px9 at 32-33. Belmonte testified that she also analyzed situational factors, or elements of acquired disability, that impact a person's ability to work again, and for Petitioner, she noted that Petitioner did not have any computer skills, that the 12-year employment gap would be concerning to employers and would require an explanation, that Petitioner walked with a cane which would limit the environment she could work in, and that Petitioner told her she had applied for jobs for a year without success. Px9 at 34-35. Belmonte's opinion was that Petitioner had lost access to her pre-injury job and line of occupation as a bus driver. Px9 at 35-38. Belmonte opined that Petitioner was not alternatively employable, based on Petitioner's age, education, lack of transferrable skills, lack of computer skills, permanent work restrictions, and 11-year employment gap. Px9 at 38-42. Belmonte testified that Petitioner would certainly not be viewed as a competitive candidate in any situation, even if she did at one time have a skill to offer. Px9 at 42. Belmonte testified that it would be very difficult and potentially impossible to place Petitioner in any job. Px9 at 43.

On cross examination, Belmonte testified that she had no records related to Petitioner's job search. Px9 at 44-45. Belmonte was not provided with Dr. Nicholson's IME report. Px9 at 45. Belmonte did not know that Petitioner was to attend a vocational rehabilitation program, Wheels in Motion, in 2015, and was aware of only the one-year of job search that was required of her by Respondent. Px9 at 51. Belmonte testified that she gathered that Petitioner was using her phone to access Indeed.com to apply for jobs because Petitioner told her that she had never owned a computer. Px9 at 51. Belmonte testified that Petitioner told her that she applied for drug and alcohol related counseling jobs and jobs in social services. Px9 at 52. Belmonte testified that those jobs are primarily sedentary. Px9 at 52-53. Belmonte did not ask Petitioner specifics about how many

applications she was submitting. Px9 at 53. Belmonte was not aware that Petitioner moved to Las Vegas for two or three years. Px9 at 53. Petitioner told Belmonte that she was approved for Social Security disability around 2017. Px9 at 59. Regarding whether Petitioner would qualify for a security guard or lobby employee position, Belmonte testified that the overall majority of employers who hire for security type jobs want the hire to be ready and willing to potentially apprehend individuals, and that finding the type of job where the hire only watches people scan in, is difficult and not indicative to her of any kind of stable labor market that Petitioner could do. Px9 at 63-65. Belmonte testified that there is a stable labor market for unskilled workers, but not at the sedentary level of physical demand, and that unskilled workers are at light duty and above. Px9 at 65. Belmonte testified that a theatre usher would be considered light duty because you would have to be on your feet, and it would not be considered stable employment because it would not offer a 40-hour workweek. Px9 at 65-66. Belmonte testified that Petitioner would have difficulty pursuing an effective job search online without computer skills. Px9 at 66. Belmonte testified that she imagined that part of the problem with Petitioner not getting any responses to her job search in 2016 was because she did not really know how to look for work. Px9 at 67. Belmonte agreed that computers are accessible in most public libraries and have resources available for people who look for them. Px9 at 68-69. The position of a greeter is considered light duty. Px9 at 69. Belmonte testified that collections jobs are not done over the phone only, and that she could not comment on the physical demand level of that job because she was not familiar with it. Px9 at 69. Belmonte's understanding of collections jobs is that they require you to work on a computer and make phone calls simultaneously and then document the results of your phone calls as you are on the phone and after you are off the phone. Px9 at 69-70. Belmonte's opinion was that Petitioner would not have been able to find employment in a sedentary position if her limitations were limited to the left upper extremity. Px9 at 70-71. Belmonte's opinion would be the same regarding whether in 2015 Petitioner would have been employable in a sedentary work position if her disability was limited to the left upper extremity. Px9 at 71-72. Belmonte then testified that "[i]f we start chipping away at the whole profile of [Petitioner] today, then I think there would be a chance that things could be different nine years ago." Px9 at 72-73. Belmonte had not spoken to any of Petitioner's treating physicians. Px9 at 73.

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). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing and finds her 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:

The Arbitrator notes that the Request for Hearing form, Ax1, reflects that Respondent agrees that on October 25, 2011, Petitioner sustained accidental injuries that arose out of and in the course of her employment, "only as to the extent of cervical/lumbar sprain/strain that resolved in 2012 and left shoulder only." The Arbitrator notes that Respondent's actual dispute lies in whether injuries to Petitioner's left shoulder, right shoulder, and to the cervical and lumbar spine beyond sprains/strains resolving in 2012 are causally related to the October 25, 2011 injury.

The Arbitrator also notes that at arbitration, Respondent objected to the filing of Petitioner's Amended Complaint, which added the right shoulder as an injured body part. Tr. at 16-19. The Arbitrator has considered Respondent's objection, and Respondent's objection is overruled.

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating her preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

Having considered all the evidence, the Arbitrator finds that Petitioner's current left shoulder, right shoulder, cervical spine, and lumbar spine conditions of ill-being are causally related to the October 25, 2011 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Concentra Medical Center, (2) the records of Dr. Morgenstern, (3) the records and testimony of Dr. Silver, (4) the records and testimony of Dr. Chhadia, (5) the fact that none of the records in evidence reflect that Petitioner was actively treating for a left shoulder, right shoulder, cervical spine, or lumbar spine condition prior to October 25, 2011, and (6) Petitioner's credible testimony that she did not have a right shoulder or left shoulder injury or receive medical treatment for a right shoulder or left shoulder condition prior to October 25, 2011. Overall, the record demonstrates that Petitioner was in condition of good health immediately prior to October 25, 2011 and that Petitioner was able to work full duty and without restrictions immediately prior to the work accident. Additionally, there is no evidence of any reinjury or other intervening event that would sever the chain of causation.

Regarding Petitioner's current left shoulder condition of ill-being, the Arbitrator has considered the causation opinions of Dr. Nicholson and finds his opinions less persuasive than the opinions of Dr. Morgenstern, Dr. Silver, and Dr. Chaddia. The Arbitrator finds that overall, the record supports the opinions of Petitioner's treating physicians, that as a result of the October 25, 2011 injury, Petitioner sustained a permanent aggravation of a preexisting condition, requiring an arthroscopy, subsequent hemiarthroplasty, and necessary conversion of hemiarthroplasty to total shoulder arthroplasty. The Arbitrator notes that the opinions of Dr. Kornblatt are consistent with those of Dr. Morgenstern, Dr. Silver, and Dr. Chhadia. The Arbitrator further notes that despite his opinions relative to causation, Dr. Nicholson agrees that Petitioner would benefit from a left reverse total shoulder arthroplasty.

Regarding Petitioner's current right shoulder condition of ill-being, the Arbitrator has considered the opinions of Dr. Nicholson and finds his opinions less persuasive than the opinions of Dr. Silver and Dr. Chhadia. The Arbitrator finds that overall, the record supports Dr. Silver's and Dr. Chhadia's opinions that Petitioner developed acceleration and aggravation of underlying right shoulder osteoarthritis from overcompensation as a result of the left shoulder injury. The Arbitrator notes that there is no evidence of any right shoulder complaints, issues, or treatment prior to October 25, 2011. The Arbitrator also notes that despite his opinions relative to causation, Dr. Nicholson agrees that Petitioner would benefit from converting a hemiarthroplasty to a reverse total shoulder arthroplasty.

Regarding Petitioner's cervical and lumbar spine conditions of ill-being, the Arbitrator notes that Petitioner underwent minimal treatment for the cervical and lumbar spine after the October 25, 2011 injury. The Arbitrator notes that Petitioner was diagnosed with cervical and lumbar strains and that she underwent a cervical MRI on November 30, 2011 and an EMG/NCV on June 20, 2012, which was essentially unremarkable. The Arbitrator further notes that Petitioner testified that at the time of arbitration, it had been a while since she had experienced neck or head pain. Accordingly, the Arbitrator finds causation for Petitioner's cervical and lumbar spine conditions of ill-being as to the need for the minimal treatment received after the October 25, 2011 work accident, however, the Arbitrator does not view these conditions or minimal treatment for these conditions as significantly contributing to Petitioner's current disability.

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:

Consistent with the Arbitrator's prior findings regarding causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px1, Px3, Px4, Px7, Px13, and Px15, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including credit for such payments reflected in Rx13. By stipulation, Respondent is entitled to a credit in the amount of \$214,120.54 for medical expenses paid by Respondent. See Ax1, No. 9.

Also, by stipulation, Respondent will pay any previously submitted unpaid medical bills directly to the provider in accordance with the fee schedule or negotiated rate, whichever is less, for medical services for the left shoulder for dates of service from October 25, 2011 until October 25, 2021, as well as for medical services for the cervical and lumbar spine rendered by Dr. Kanagaraju and Dr. Morgenstern. Tr. at 15-16.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits for the period of October 25, 2011 to March 7, 2025, the date of arbitration. See Ax1, No. 8. Respondent disputes Petitioner's claim for TTD benefits and claims that Petitioner is entitled to TTD benefits for the period of October 26, 2011 to October 23, 2012 and December 5, 2012 to March 17, 2016. See Ax1, No. 8.

The Arbitrator finds that the evidence supports an award for TTD benefits. The Arbitrator notes that Dr. Silver has maintained Petitioner off work since June 15, 2018 and Dr. Silver testified that Petitioner was unable to do any type of work due to the pain, weakness, and limited motion of the left arm, noting that Petitioner's lifting capabilities were "essentially, nil" as of June 2018. The Arbitrator additionally notes that while Dr. Chhadia found Petitioner at MMI on March 8, 2021, he testified that he deemed Petitioner at MMI because she was

unable to proceed with surgery and he opined that Petitioner continued to be medically unable to work as of October 25, 2021. The Arbitrator acknowledges that Petitioner moved to Las Vegas for a short period sometime after June 15, 2018 and returned sometime prior to December 11, 2019. There is no evidence, however, that Petitioner worked in any capacity or that she was less impaired than she claimed to be during that time. Additionally, the evidence demonstrates that Petitioner returned to work and was paid for the period of October 24, 2012 through December 4, 2012. Tr. at 122-123, 125-126; Rx15. Because the Arbitrator finds that Petitioner was permanently and totally disabled as of May 26, 2022, the Arbitrator awards TTD benefits for the periods of October 26, 2011 to October 23, 2012 and December 5, 2012 to May 25, 2022.

By stipulation, Respondent is entitled to a credit in the amount of \$178,587.90 for TTD benefits paid to Petitioner by Respondent. See Ax1, No. 9.

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

A claimant is totally and permanently disabled when she is unable to make some contribution to the work force sufficient to justify the payment of wages. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983). A claimant, however, need not be reduced to total physical incapacity before a permanent total disability award may be granted. *Id.* Instead, the claimant must show that she is unable to perform services, except those that are so limited in quantity, dependability, or quality that there is no reasonable stable market for her. *A.M.T.C. of Illinois, Inc., Aero Mayflower Transit Co. v. Industrial Comm'n*, 77 Ill. 2d 482, 487 (1979).

Where a claimant's disability is of a limited nature such that she is not obviously unemployable, or where there is no medical evidence to support a claim of total disability, the claimant has the burden of establishing that she falls into the "odd-lot" category. *Ceco Corp.*, 95 Ill. 2d at 287. There are two ways a claimant can ordinarily satisfy her burden of proving that she fits into the "odd-lot" category: (1) by showing a diligent but unsuccessful job search, or (2) by demonstrating that because of her age, training, education, experience, and condition, she is unable to engage in stable and continuous employment. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Once the claimant has initially established the unavailability of employment to a person in her circumstances, the burden then shifts to the employer to show that suitable work is regularly and continuously available to the claimant. *Economy Packing Company v. IWCC*, 387 Ill. App. 3d 283, 293 (2008).

In this case, Dr. Morgenstern, Dr. Silver, Dr. Chhadia, Dr. Kornblatt, and Dr. Nicholson agree that Petitioner is unable to return to her position as a bus operator. As of June 15, 2018, Dr. Silver maintained Petitioner off work. Dr. Silver testified that Petitioner was unable to do any type of work due to pain, weakness, and limited range of motion of the arm. Dr. Chhadia testified that Petitioner remained medically unable to work as of October 25, 2021. The Arbitrator finds that the overall evidence demonstrates that Petitioner's physical abilities do not meet the physical requirements of her job as a bus operator with Respondent and that the accident caused an ongoing condition which prevented Petitioner from returning to her job as a bus operator with Respondent.

Petitioner offered the testimony of certified vocational counselor, Laura Belmonte. Regarding Petitioner's vocational profile, Belmonte testified that (1) Petitioner obtained a high school diploma and a certificate in business administration, (2) Petitioner never held a job that required her to demonstrate a high school level ability in reading, reading comprehension, writing, grammar, or spelling, (3) Petitioner had only worked in two occupations, as a mail carrier and as a bus driver, which required physical work and did not provide her any clerical, administrative, sales, marketing, or supervisory skills, (4) Petitioner has no transferrable skills, (5) Petitioner has no computer skills, and (6) Petitioner's years' long employment gap would be concerning to employers and would require an explanation. Belmonte opined that Petitioner had lost access to her preinjury job and line of occupation as a bus driver. Belmonte opined that Petitioner was not alternatively employable based on Petitioner's age, education, lack of transferrable skills, lack of computer skills, permanent work

restrictions, and years' long employment gap. Belmonte testified that Petitioner would not be viewed as a competitive candidate, even if she did have a skill to offer. Belmonte was questioned as to Petitioner's ability to find work as a security guard/lobby employee, theatre usher, greeter, and in collections. Belmonte testified that the majority of employers that hire for security guard/lobby employee positions would require that the hire be ready and willing to potentially apprehend individuals, and that finding such a position where the hire only watches people scan in is difficult and not indicative of a stable labor market for Petitioner. Belmonte testified that a position as a theatre usher is considered light duty and is not considered stable employment because it does not offer a 40-hour workweek. Belmonte testified that a position as a greeter is considered light duty. Belmonte testified that a position in collections would require computer skills. Belmonte opined that Petitioner would not have been able to find employment in a sedentary position if her limitations were limited to the left upper extremity.

Respondent offered the testimony of vocational case manager, Patrick Conway. Conway serviced accounts pertaining to Respondent's vocational rehabilitation services program, Wheels in Motion. Conway testified that he was assigned Petitioner's account, and that he was to provide Petitioner with one-on-one job search assistance. Conway testified that Petitioner was to attend orientation on July 14, 2015. While Conway testified that Petitioner did not attend orientation or participate in the Wheels in Motion program, Conway conceded that he did not have any communication with Petitioner prior to the orientation date, and that it was Respondent's personnel who would communicate with Petitioner regarding her participation in the program. Conway did not have any information regarding what was sent to Petitioner regarding the Wheels in Motion program by Respondent. Conway testified that he may have carbon copied Petitioner on the reports he prepared, however, Conway's reports do not reflect that Petitioner was carbon copied. Rx14. Conway also conceded that he did not email Petitioner. Conway did not prepare a vocational evaluation report. Furthermore, regarding the Wheels in Motion program, Petitioner credibly testified that (1) she was not instructed by Respondent to participate in a vocational evaluation, (2) that she was not called or emailed by Respondent regarding attending vocational training at its facility, (3) that she was not contacted by a third-party and advised that she needed to be evaluated for vocational training, and (4) that she was not advised by her former attorney that she needed to attend the Wheels in Motion program. Petitioner testified that Respondent required only that she complete job search logs, which she sent to Respondent. Rx16. Petitioner's testimony is un rebutted.

The Arbitrator notes that while Respondent offered the testimony of Conway, Respondent did not offer any evidence that rebuts Belmonte's opinions or testimony. Additionally, Respondent did not offer any evidence that a viable and stable labor market exists for Petitioner. The Arbitrator finds that the overall evidence demonstrates that due to Petitioner's age, training, education, experience, and condition, Petitioner is unable to engage in stable and continuous employment.

Having considered all the evidence, the Arbitrator finds that Petitioner has met her burden in satisfying an odd-lot permanent total disability award pursuant to Section 8(f) of the Act and that Respondent failed to prove the existence of a stable labor market available to Petitioner. Therefore, Respondent shall pay Petitioner permanent and total disability benefits of \$790.67/week for life, commencing May 26, 2022, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.



ANA VAZQUEZ, ARBITRATOR

JUNE 6 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006342
Case Name	Florence Johnson-Bailey v. County of Will, Sheriff's Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0004
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Aaron Morrow
Respondent Attorney	Lauren Kus

DATE FILED: 1/15/2026

/s/ Raychel Wesley, 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 Permanent Disability	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FLORENCE JOHNSON-BAILEY,

Petitioner,

vs.

NO: 22 WC 06342

COUNTY OF WILL,
SHERIFF'S DEPARTMENT ,

Respondent.

DECISION AND OPINION ON REVIEW

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

FINDINGS OF FACT

While the Commission adopts the Findings of Fact as set forth in the Decision of the Arbitrator and incorporates such facts herein, we also supplement the record with additional medical records:

On April 22, 2020, Petitioner presented at Greathouse Medical Group with complaints of cough and fatigue. She had tested positive for COVID-19 approximately two weeks prior, and had been off work ever since. She was prescribed Symbicort Aerosol, which was subsequently cancelled.

On November 23, 2020, Petitioner followed up with Greathouse Medical Group. It was noted that she was taking a Symbicort Aerosol inhaler, and discussed with Dr. Dierdra Greathouse-

Williams the importance of Petitioner remaining hydrated as well as the importance of her avoiding contact with sick persons.

CONCLUSIONS OF LAW

I. Permanent Disability

The Arbitrator awarded permanent partial disability benefits for 12.5 weeks, finding that Petitioner sustained 2.5% loss of use of her person as a whole as a result of her COVID-19 contraction. The Commission views the evidence slightly different than the Arbitrator, and we write separately to clarify our differing viewpoint.

Petitioner's undisputed work accident occurred after September 1, 2011; therefore, §8.1b is applicable. Pursuant to §8.1b(b), the Commission is to determine permanent partial disability based upon five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. *820 ILCS 305/8.1b(b)*.

§8.1b(b)(i) – impairment rating

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

§8.1b(b)(ii) – occupation of the injured employee

Petitioner's pre-accident occupation was correctional officer. After contracting COVID-19, she was eventually able to return to her pre-accident position. However, she testified that approximately in December of 2022 she was promoted into a supervisory role which limits her exposure to inmates. The Commission assigns some weight to this factor.

§8.1b(b)(iii) – age at the time of the injury

Petitioner was 51 years old at the time of her diagnosis. The Commission notes that Petitioner still has a somewhat significant portion of her work life remaining. The Commission assigns some weight to this factor.

§8.1b(b)(iv) – future earning capacity

The record reflects no evidence of a loss of Petitioner's future earning capacity. In fact, Petitioner has since been promoted to a supervisory role. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records

Following Petitioner's contraction of COVID-19, she suffered from various symptoms which were highlighted in medical records. She developed a cough and fever, suffered from fatigue and headaches, and developed changes in her ability to taste and smell. Although Dr. Liana Palacci opined Petitioner's symptoms all resolved by mid-May of 2020 (just five weeks after contraction), evidence in the record corroborates Petitioner's testimony that her symptoms lingered for six to 10 months after her disease contraction. On April 22, 2020, due to her ongoing COVID-19 symptoms, Petitioner was prescribed a Symbicort inhaler, although the request was subsequently cancelled. Nevertheless, during a November 23, 2020 follow up, it was noted that Petitioner was indeed taking a Symbicort Aerosol inhaler. Furthermore, Dr. Greathouse-Williams discussed remaining hydrated with Petitioner. The Commission finds it more likely than not that these recommendations were interconnected with Petitioner's COVID-19 symptoms. Accordingly, although the record indicates Petitioner's symptoms had resolved by her January 3, 2024 appointment with Dr. Palacci, we find that the record also indicates Petitioner's symptoms did not resolve by mid-May 2020, and lingered for six to 10 months while requiring medication. The Commission finds this factor weighs in favor of increased disability.

Based on the above, the Commission finds that while Petitioner is entitled to an award for permanent partial disability benefits, our analysis of the enumerated factors supports a modification of the award from a 2.5% loss of use of a person as a whole down to a 1.5% loss of use of a person as a whole.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 9, 2025, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses incurred in the care and treatment of Petitioner's COVID-19 disease, pursuant to §8(a) and subject to §8.2 of the Act. This includes expenses related to testing and treatment from April 9, 2020 through April 24, 2020.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$836.69 (maximum rate) per week for a period of 7.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 1.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner compensation that has accrued from April 7, 2020 through March 5, 2025 and shall pay the remainder of the award, if any, in weekly payments.

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

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

Under §19(f)(2) 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.

January 15, 2026

RAW/wde

/s/ *Raychel A. Wesley*

O: 11/19/25

/s/ *Carolyn M. Doherty*

43

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006342
Case Name	Florence Johnson-Bailey v. County of Will, Sheriff's Department
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Aaron Morrow
Respondent Attorney	Lauren Kus

DATE FILED: 4/9/2025

/s/ Frank Soto, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 8 2025 4.00%

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**

Florence Johnson-Bailey

Employee/Petitioner

Case # **22** WC **006342**

v.

Consolidated cases: _____

County of Will, Sheriff's Department

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 **Soto**, Arbitrator of the Commission, in the city of **Joliet**, on **March 5, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 7, 2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$81,855.50**; the average weekly wage was **\$1574.14**.

On the date of accident, Petitioner was **51** years of age, *married* with **1** dependent children.

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

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

Respondent shall be given a credit of **\$0.00** 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 benefits***

Respondent stipulated the medical, bills listed below, should be paid and if not already paid, Respondent would pay those bills pursuant to the fee schedule. (Arb. Ex. #1).

- Office visit DOS 4/9/2020 from Greathouse Medical Group;
- Covid test DOS 4/10/2020 from CA Quest Diagnostics Schaumburg;
- Office visit DOS 4/13/2020 from Greathouse Medical Group;
- Office visit DOS 4/23/2020 from Physicians Immediate Care;
- Office visit DOS 4/24/2020 from Greathouse Medical Group

Respondent shall pay Petitioner permanent partial disability benefits of 12.5 weeks, pursuant to Section 8(d)2 of the Act, because Petitioner sustained permanent partial disability to the extent of 2.5% person-as-a-whole, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner compensation that has accrued from April 7, 2020 through March 5, 2025 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /s/ Frank J. Soto
Arbitrator

APRIL 9 2025

Procedural History

This case was tried on March 5, 2025. The disputed issues were causation and the nature and extent of Petitioner's injury¹. This case involves a Covid-19 exposure of a frontline worker and falls within the presumption period created pursuant to 820 ILCS 310/1(g) (amended June 5, 2020).

Findings of Fact

Florence Johnson-Bailey (hereinafter referred to as "Petitioner") was a 51-year-old deputy correctional officer for County of Will Sheriff's Department (hereafter referred to as "Respondent") who caught Covid-19 at work on April 7, 2020. (T. 10.). It is undisputed that Petitioner's Covid-19 diagnosis arose out of and in the course of her employment. (Arb. Ex. #1). Petitioner testified to experiencing various symptoms including fever, headaches, loss of smell, loss of taste, tiredness, and brain fog. (T. 11-12). Petitioner was off work for this virus from April 7, 2020 through June 1, 2020. (T. 13).

On April 23, 2020 Petitioner presented to Physicians Immediate Care reporting continued symptoms of fatigue and headaches. (Px. 3). The medical records indicate Petitioner presented to Physicians Immediate Care for a Covid test to determine whether she could return to work. (*Id.*). At that time, Petitioner continued to test positive for Covid. (T. 30, Px. 3).

Petitioner returned to work on June 1, 2020. (T. 13). Petitioner testified despite returning to work she continued to suffer loss of smell, loss of taste, headaches, tiredness, and brain fog. (T. 14, 38). Petitioner testified her loss of smell lasted for 6 to 7 months and her loss of taste resolved about 3 months later or by December of 2020. (T. 17). Petitioner testified she continued to experience headaches until January of 2021 and tiredness until February of 2021. (T. 20-21).

Petitioner testified while working for Respondent she caught Covid-19 a total of 7 times. (T. 32). Petitioner testified, as a corrections officer, she was in direct contact with about 51 inmates. (T. 15). Petitioner testified her job duties included moving inmates, talking to the inmates, transferring inmates, inspecting the cells of inmates, taking inmates in and out of the pod, and performing security checks every 30 minutes. (T. 16).

¹ Respondent disputed causation but stipulated that Petitioner's Covid-19 diagnosis arose out of and in the course of her employment and was casually related to her employment. (T. 4, 8). Respondent stipulated they only dispute whether Petitioner's current symptoms, if any, aren't related to her Covid-19 exposure of April 7, 2020. (*Id.*).

Clint Wilkins testified for Respondent. Mr. Wilkins testified to working with Petitioner for many years and that he is currently Petitioner's supervisor but wasn't her supervisor in 2020. (T. 42, 48). Mr. Wilkins testified Petitioner's job duties, at that time, required her to work housing, intake, release as well as various other positions. (T. 45). Mr. Wilkins testified when working the housing unit, Petitioner would need to supervise the inmates for 8 hours less an hour for lunch. (T. 45). Mr. Wilkins testified during the 7 hours Petitioner was supervising the inmates she would be required to walk the whole unit every 30 minutes and account for all the inmates. (T. 45).

On January 3, 2024, Petitioner was examined by Dr. Liana Palacci for an independent medical examination requested by her attorney. (Px. 4). The medical report dated January 3, 2024 authored by Dr. Palacci indicates that Petitioner's symptoms resolved after 1.5 months and she likely reached maximum medical improvement by the end of May 2020 after her second negative Covid test. (*Id.*).

Petitioner testified she did not tell Dr. Palacci her symptoms resolved by May of 2020. (T. 34). Petitioner testified she did not return to work until June of 2020. (*Id.*). Petitioner testified at the time she saw Dr. Palacci in January of 2024 that her Covid complaints resolved. (*Id.*).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator Finds as follows:

At trial, seeking to clarify their position, Respondent stipulated Petitioner's Covid-19 diagnosis arose out of an in the course of her employment and was causally related to her employment. (T. 4). Respondent stated they only dispute the existence of any remaining current symptoms being related to Petitioner's April 7, 2020 Covid-19 exposure. (T. 8).

The Arbitrator notes Petitioner is a considered a frontline worker pursuant to 820 ILCS 310/1(g) (amended June 5, 2020), see also Executive Order 2020-10 issued March 20, 2020. (Px. 5). Based upon Subsection 1(g) a rebuttable presumption was created for frontline workers if the employee's injury or occupational disease resulted from exposure to and contraction of

the Covid-19 virus. Under Subsection 1(g) the exposure and contraction are rebuttably presumed to have *arisen out of and in the course of* the employee's frontline worker's employment and that the injury or occupational disease *shall be rebuttably presumed to be causally connected* to the hazards or exposures of the employee frontline worker's employment. 820 ILCS 310/1(g) (amended June 5, 2020), *emphasis added*. In the instant case, Respondent proffered no evidence rebutting the presumption created under Subsection 1(g). As such, the Arbitrator finds that Petitioner's Covid-19 exposure was causally related to her employment.

The Arbitrator also finds that Respondent's stipulation incorporates causation and Respondent only disputed the nature and extent of Petitioner's injury. The Arbitrator further finds the medical records and Petitioner's testimony supports that her Covid-19 diagnosis was causally related to her employment and that Petitioner's symptoms full resolved by January of 2021 or within 8 months of exposure.

With respect to issue "L" nature and extent of Petitioner's injury, the Arbitrator finds as follows:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(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. *Id.*

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes no impairment rating was offered into evidence. As such, the Arbitrator gives no weight to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee. Petitioner is employed as a corrections officer, a profession that requires significant contact with inmates thus increasing the risk of exposure to viruses such as Covid-19. As such, the Arbitrator gives some weight to this factor in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 51 years old at the time of her diagnosis. The Arbitrator notes Petitioner has a significant portion of her work life remaining and as she ages and is further exposed to Covid-19 that her ability to recover from such viruses could diminish. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity. No evidence of loss of future earnings was offered into evidence. As such, the Arbitrator gives this factor gives little weight to this factor in determining permanent partial disability.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records. Petitioner reported various symptoms which were supported by the medical records. Petitioner testified she suffered various symptoms which resolved at different times. Petitioner testified some of her symptoms continued after returning to work but had fully resolved by the time she saw Dr. Palacci in January of 2024. The Arbitrator notes that Petitioner disputed several items contained in Dr. Palacci's report including the date her symptoms resolved. Dr. Palacci indicated Petitioner's symptoms resolved by April 2020 after her second negative Covid test. Petitioner testified she still had Covid in April of 2020 and did not return to

work until June of 2020. Petitioner testified her symptoms resolved at different times but were fully resolved when she saw Dr. Palacci in January of 2024.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2.5% person-as-a-whole representing 12.5 weeks, pursuant to Section 8(d)2 of the Act.

By: /s/ Frank J. Soto
Arbitrator

APRIL 9 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012873
Case Name	Henry Johansen v. YRC Freight
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0005
Number of Pages of Decision	29
Decision Issued By	Frank Soto, Commissioner, Frank Soto, Commissioner

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Ryan McCarthy

DATE FILED: 1/15/2026

/s/ Frank Soto, Commissioner

Signature

DISSENT

/s/ Frank Soto, Commissioner

Signature

18 WC 12873

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

HENRY JOHANSEN,

Petitioner,

vs.

NO: 18 WC 12873

YRC FREIGHT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, 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 9, 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.

18 WC 12873

Page 2

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$20,000.00. 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.

January 15, 2026

O: 11/19/25

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 found that Petitioner's activities while on vacation in October of 2019 was an intervening accident that broke the chain of causation between Petitioner's original right ankle condition and his current right ankle condition.

To obtain compensation under the Act, an injured employee must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). The "arising out of" component addresses the causal connection between a work-related injury and the employee's condition of ill-being. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). An injury is said to "arise out of" one's employment if it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro, Inc.*, 207 Ill. 2d at 203. 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 (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 (1970).

In the case at bar, following an initial delay in right ankle complaints post-accident, Petitioner began treatment with Dr. Lawrence Kosova, a podiatrist, who diagnosed right posterior tibial tendinitis and right ankle and joint pain. On November 13, 2018, Petitioner returned to Dr. Kosova reporting that he was almost pain free and wanted to be released to return to work without restrictions. On November 19, 2018, Dr. Kosova released Petitioner from care without restrictions.

On March 5, 2019, Petitioner followed up with Dr. Kosova reporting that he was doing well. Dr. Kosova's examination noted no pain with palpitation in the posterior tibial tendon. At that time, Dr. Kosova prescribed an orthotics.

On October 10, 2019, Petitioner returned to Dr. Kosova reporting right leg, hip and ankle pain after doing a lot of walking and bicycling while on vacation at Mackinaw Island. In his notes, Dr. Kosova noted after walking and bicycling, Petitioner was now experiencing right leg, hip and ankle pain possibly related to his activities. Dr. Kosova's examination noted a slight edema on the right medial ankle with pain and tenderness with palpation along the posterior tibial tendon, but that during the examination, Petitioner was not experiencing pain in these areas. X-rays were taken which showed hypertrophy to the dorsal talus, a plantar calcaneal spur, and degeneration along the talonavicular cuneiform joint dorsally. At that time, Dr. Kosova ordered an MRI to rule out a fracture or other injury to the right foot.

Petitioner followed up with Dr. Kosova on July 14, 2020. At that time, Petitioner reported ankle pain after working 60+ hours a week. Dr. Kosova indicated Petitioner's pain was in the medial arch and he should be wearing his orthotics. Dr. Kosova noted that Petitioner was wearing sandals and not his orthotics. Petitioner reported he was able to walk fine, without pain, in sandals. Dr. Kosova noted observing Petitioner walking out of the office in sandals without any limp or altered gait. In his records, Dr. Kosova wrote that the last time he saw Petitioner was October of 2019, and before that, he did not see Petitioner for seven months. At that time, Dr. Kosova determined that Petitioner did not have a right ankle condition needing treatment and that he should obtain a second opinion regarding his right leg. Petitioner returned to Dr. Dworsky on May 6, 2021 reporting that he was released from care by the podiatrist with no further treatment recommendations because his symptoms were related to his leg, not his ankle.

Petitioner underwent an MRI on August 9, 2020, which showed a grade 1 sprain of the posterior tibiotalar ligament without rupture, with mild plantar fasciitis, and osteoarthritic changes most pronounced within the posterior subtalar joint.

On August 13, 2020, Petitioner returned to Dr. Dworsky who reviewed the MRI and found it showed some chronic changes, especially of the deltoid ligament and within the calcaneus itself, a subchondral edema with cyst formation in the lateral talar dome, and plantar fascial thickening. Dr. Dworsky recommended Petitioner return to his podiatrist to determine if there was any treatment for Petitioner. At that time, Dr. Dworsky released Petitioner from care.

On August 18, 2020, Petitioner returned to Dr. Kosova who noted that Petitioner's pathology was mostly located in the lateral ankle, not where he reports pain. Dr. Kosova indicated that Petitioner's pain was in the medial ankle posteriorly along the posterior tibial tendon. Dr. Kosova noted that Petitioner was wearing sandals and was not using his orthotics. Dr. Kosova reminded Petitioner the last time he saw Petitioner he was also not wearing his orthotics. Dr. Kosova told Petitioner that the orthotics supports the medial arch, which is the location of his pain. Dr. Kosova indicated Petitioner's problems could be due to arthritis of the ankle joints and the subtalar joint.

Petitioner returned to Dr. Dworsky on May 27, 2021 reporting pain in the medial aspect of his right lower leg and ankle. Petitioner also reported that his podiatrist indicated his problem was in his leg and he should follow up with an orthopedic physician. At that time, Petitioner stated ever since his injury, he has had pain in his shin and posterior calf region. Petitioner reported that he was released from care by his podiatrist with no further medical intervention. Dr. Dworsky reviewed the MRI which, he said, did not show any significant pathology of the leg or ankle. Dr. Dworsky released Petitioner from care and referred Petitioner to Dr. Ho.

On January 17, 2022, Petitioner was examined by Dr. Ho. At that time, Petitioner reported pain on the inside of his right foot and over the ankle with activity. Dr. Ho, after reviewing the August 9, 2020 MRI, diagnosed Petitioner with right posterior tibial dysfunction, spring ligament tear, and a right partial gastrocnemius tear. At that time, Dr. Ho recommended a right ankle arthroscopy consisting of a microfracture, calcaneal osteotomy, spring ligament reconstruction, and a FDL transfer.

Petitioner also underwent a Section 12 examination with Dr. Dorning on April 11, 2023. Dr. Dorning reviewed Petitioner's prior MRIs and conceded that it was possible that Petitioner's work accident caused a temporary aggravation of his preexisting subtalar arthritis which resolved. Dr. Dorning further opined that Petitioner's work accident was not causally related to his current condition. Dr. Dorning noted Petitioner's work accident did not cause any pain on the right side of his ankle and that his current condition is caused by the right talus OCD lesion, tibial tendon dysfunction and the spring ligament tear not present prior to the August 10, 2020 MRI. In his June 3, 2024 addendum report, Dr. Dorning opined that there was no evidence of a talar injury related to Petitioner's initial work incident or evidence of a distal posterior tibial tendon tear or spring ligament injury on the August 9, 2020. MRI.

In his narrative report dated February 8, 2024, Dr. Ho stated he agrees with Drs. Pinzur and Dorning's opinion that Petitioner had preexisting subtalar arthritis which was temporarily exacerbated by his work injury. Dr. Ho disagrees with Drs. Pinzur and Dorning who both opined that Petitioner's current condition is not related to his work accident. Dr. Ho believes Petitioner's current symptoms consisting of the posterior tibial dysfunction, spring ligament treat, and lateral talus OCD lesion were caused by his work injury because Petitioner did not have right ankle pain prior to his work accident. Dr. Ho's opinion is based upon the history Petitioner provided.

Petitioner reported to Dr. Ho continued right ankle pain since his work injury which had never resolved.

The history relied upon by Dr. Ho is inconsistent with the medical evidence. Based upon Dr. Ho's narrative report, it does not appear he reviewed Petitioner's prior medical records including the records of the treating podiatrist, Dr. Kosova, which indicates Petitioner's right ankle was symptom free for a significant period and was released from care. The medical records reflect that the only pain which Petitioner reported that continued to exist after his work injury was in the shin and posterior calf region, not in the right ankle. Dr. Ho's opinions are based upon an incorrect history involving both the duration and location of Petitioner's ongoing symptoms. Additionally, based on the narrative report, it does not appear Dr. Ho was aware that Petitioner returned to treatment for the right ankle only after his trip to Mackinaw Island and reporting he was working full duty 60+ hours a day as a truck driver. Dr. Ho's opinions are, therefore, 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). As such, Dr. Ho and Petitioner's medical records fail to sufficiently demonstrate that the changes in Petitioner's symptoms, pathology, and treatment would not have occurred "but for" the original injury, as required under *International Harvester* to prove compensability.

Petitioner's current condition is the result of an independent intervening accident which broke the chain of causation between his initial work-related injury and his current condition. The medical evidence shows the nature of Petitioner's right foot symptoms changed after the physical activities performed during his Mackinaw Island trip. Prior to that trip, Petitioner was released from care without restrictions. After his trip, Dr. Kosova noted Petitioner's symptoms changed involving a different part of his right foot. Dr. Dorning noted that Petitioner's work accident did not cause any pain on the right side of his ankle. Prior to his Mackinaw trip, Petitioner was not a surgical candidate but, after the trip, Dr. Ho recommended surgery. Dr. Dorning noted the surgery being recommended seeks to address a talus OCD lesion, tibial tendon disfunction, and a spring ligament tear, pathology not present prior to the August 10, 2020 MRI.

In *National Freight Industries v. IWCC*, the Illinois Appellate Court found the claimant had sustained an intervening accident that broke the chain of causation between his original work accident and his current condition of ill-being by considering (1) the change in Petitioner's symptoms after the second event; (2) the change in pathology after the second event, (3) the change in treatment after the second event, and (4) the change in work status after the second event. 2013 IL App (5th) 120043WC.

Based upon the evidence, Petitioner's activities during the Mackinaw Island trip were an independent intervening cause which broke the causal chain between his original work-related injury and his current condition. An employer can be relieved of liability by virtue of an intervening cause, if the intervening cause completely breaks the causal chain. *Boatman v. Industrial Commission*, 256 Ill.App.3d. 1070, 628 N.E.2d 829, 195 Ill.Dec. 365 (First Dist. 1993); see also, *Zion-Benton Township High School Dist. 126 v. Industrial Comm'n*, 242 Ill.App.3d 109,

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114, 182 Ill.Dec. 440, 609 N.E.2d 974 (1993), and *Ditola v. Industrial Comm'n*, 216 Ill.App.3d 531, 535-36, 159 Ill.Dec. 710, 576 N.E.2d 379 (1991).

In all other respects not stated herein, I agree with the Decision of the majority.

/s/ Frank J. Soto

Frank J. Soto

January 15, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012873
Case Name	Henry Johansen v. YRC Freight
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Ryan McCarthy

DATE FILED: 5/9/2025

/s/ Ana Vazquez, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 6 2025 4.09%

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)

Henry Johansen

Employee/Petitioner

v.

YRC Freight

Employer/Respondent

Case # **18** WC **012873**

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 **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, 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. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On the date of accident, **April 17, 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 **\$76,314.68**; the average weekly wage was **\$1,467.59**.

On the date of accident, Petitioner was **64** 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 **\$16,213.32** for TTD, **\$8,311.16** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$24,524.48**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, as provided in Px10, pursuant to Sections 8(a) and 8.2 of the Act. Per the Parties' stipulation, Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Per the Parties' stipulation, Petitioner is entitled to and Respondent shall pay Petitioner TTD benefits of \$978.39/week for 16 1/7 weeks, commencing April 18, 2018 through August 8, 2018, as provided in Section 8(b) of the Act. Ax1 at No. 8. Also by stipulation, Respondent is entitled to a credit in the amount of \$16,213.32 for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

Per the Parties' stipulation, Petitioner is entitled to and Respondent shall pay Petitioner TPD benefits for the period of August 9, 2018 through November 10, 2018, representing 16 weeks. Ax1 at No. 8. Also by stipulation, Respondent is entitled to a credit in the amount of \$8,311.16 for TPD paid to Petitioner by Respondent. Ax1 at No. 9.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Bryant Ho, which includes a right ankle arthroscopy and microfracture, calcaneal osteotomy, spring ligament reconstruction, and FDL transfer, as provided in Section 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.



MAY 9 2025

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on February 4, 2025 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The issues in dispute include (1) causal connection, (2) unpaid medical bills, and (3) prospective medical treatment. Arbitrator's Exhibit ("Ax") 1. All other issues are stipulated.

FINDINGS OF FACT

On April 17, 2018, Petitioner was working for Respondent as a line-haul driver. Tr. at 15. Petitioner had worked as a line-haul driver for Respondent since July 24, 2005. Tr. at 15. Petitioner was a member of Teamsters Union Local 710 for 29 years. Tr. at 18.

Duties

Petitioner drove semi-tractor trailers, pulling doubles, triples, and long boxes. Tr. at 15-16. Petitioner had a Class A license with all of the endorsements. Tr. at 16. As a driver, Petitioner also performed pre-trip inspections of his truck, which included making sure the proper placards were on for carrying hazardous materials, as well as making sure that he was not carrying any inhalation hazardous materials. Tr. at 16. Petitioner did not load or unload the trucks. Tr. at 16.

Petitioner would drive wherever he was dispatched, and in the beginning, he drove multi-state routes. Tr. at 17. In 2018, Petitioner testified that in 2018, he was "[b]asically I'm a one-route deal[.]" which were multi-day routes. Tr. at 17. Petitioner testified that he would start on a Sunday and finish on a Monday, and that he was running doubles and triples to Cleveland and Akron, Ohio. Tr. at 17.

Petitioner would pick up his truck from the South Chicago Heights yard and would pick up additional trailers in Hammond, Indiana before beginning his route. Tr. at 18. Petitioner would perform the pre-trip truck inspection in the Hammond, Indiana yard. Tr. at 18.

Prior Injuries/Treatment

Petitioner testified that prior to beginning his shift on April 16, 2018, he was well-rested. Tr. at 19-20. Petitioner testified that he did not have any physical problems or issues performing his job duties prior to April 17, 2018. Tr. at 20.

On cross examination, Petitioner testified that he did not have an injury to his right lower extremity prior to April 17, 2018. Tr. at 78. Petitioner testified that he had never had any significant pain to the right ankle or right foot prior to April 17, 2018. Tr. at 80. Petitioner did not recall undergoing a right foot x-ray in 2013. Tr. at 80-81.

On redirect examination, Petitioner testified that he did not receive any medical treatment for his right leg or right ankle during the time between 2013 and the April 17, 2018 injury. Tr. at 90-91. Petitioner was not having any issues with his right leg or right ankle in the years leading up to April 17, 2018. Tr. at 91.

Accident

Petitioner began a route driving to Cleveland, Ohio on April 16, 2018. Tr. at 18-19. Petitioner stayed in a hotel overnight, and on the morning of April 17, 2018 he was called for a "morning pull back," which involved him

picking up triples in Cleveland, Ohio and driving them back to Hammond, Indiana. Tr. at 18-19. Petitioner dropped off the rear trailer in Hammond, Indiana and then dropped off the other two trailers at the South Chicago Heights yard. Tr. at 19. After parking the trailer on the load line, he went upstairs to the dispatch office to complete paperwork. Tr. at 20-21. The dispatch office was located on the second floor. Tr. at 21-22. After completing his paperwork, he and another driver decided to walk downstairs. Tr. at 22. The stairs he was descending were steel. Tr. at 22. Petitioner's two hands were on the railing as he descended. Tr. at 22. As he was descending the second flight of stairs, he slipped with both hands on the railing, and he leaned forward. Tr. at 22. Petitioner testified that he was terrified, and he pushed up off his right leg as hard as he possibly could to not fall any further forward. Tr. at 22, 23. Petitioner testified that there was soap and water on the floor in front of him. Tr. at 22. Petitioner testified that he noticed that he pulled something in his right leg. Tr. at 23. Petitioner testified that afterwards, he grabbed the handles and walked down the stairs, and then sat on a heater that was on the side. Tr. at 23-24. Petitioner testified that the pain in his right leg was intense and that the pain was in the right knee. Tr. at 23-24. Petitioner testified that it was very hard to bear weight on the right leg. Tr. at 24. Petitioner went upstairs and completed an accident report. Tr. at 24.

Petitioner was told to seek medical care at Comprehensive Care Occupational Clinic ("Comprehensive Care"). Tr. at 25. Petitioner first went home, took some pain medication, and laid in bed. Tr. at 25. Petitioner waited for his wife to get home, and his wife took him to Comprehensive Care. Tr. at 25.

On cross examination, Petitioner testified that after he slipped, he caught himself, and that he was able to bear some weight on the right leg to go up the stairs. Tr. at 89-90. Petitioner agreed that he did not report any issues with his right ankle. Tr. at 90.

On redirect examination, Petitioner testified that he was bearing weight primarily on his left leg as he went upstairs to the dispatch office. Tr. at 95-96.

Medical Records Summary

On April 17, 2018, Petitioner was seen at Comprehensive Care. Px1 at 4-10. A consistent accident history is noted. Petitioner complained of pain in the superior aspect of the right knee at the patellar tendon insertion as well as the right quadriceps muscle. Petitioner reported that the pain increased throughout the day, and that swelling increased to the point where he was no longer able to ambulate. It was noted that Petitioner presented with crutches and that he was unable to bear any weight on the right leg. X-rays of the right knee were obtained and demonstrated no acute fracture, but there was a gross amount of soft tissue swelling with edema noted in the soft tissue. Petitioner's diagnoses were (1) right knee strain, (2) right quadriceps muscle injury, and (3) right quadriceps tendon injury. Petitioner was placed into a knee immobilizer and was instructed to ice the affected area and elevate the leg as much as possible. Petitioner was prescribed Norco. Petitioner was instructed to refrain from driving and climbing and to continue use of crutches. Petitioner was to remain non-weightbearing at all times, and was to refrain from driving, CDL driving, and climbing. A right knee MRI was ordered. Petitioner testified that after he returned home from Comprehensive Care, he noted that his right leg swelled up and he was not able to bear weight on it. Tr. at 25-26. On cross examination, Petitioner testified that the brace that he was wearing when he presented at Comprehensive Care was from when he tore his left quadricep in 2011. Tr. at 78-79.

Petitioner underwent a right knee MRI on April 18, 2018, which demonstrated a complete rupture of the deep component of the quadriceps tendon arising from the vastus intermedius, with retraction of this portion of the tendon and large hematoma within the muscle belly, as well as edema within the vastus medialis and lateralis indicating muscle strain and chronic prominent chondral thinning along the patella. Px1 at 11-12; Px2 at 5-6.

On April 19, 2018, Petitioner saw Dr. Christine Shih at Amita Health Medical Group South. Px9 at 7-10, A consistent accident history is noted. Petitioner presented with crutches and a knee immobilizer. Petitioner was referred to Hinsdale Orthopaedics.

On April 20, 2018, Petitioner was seen by Dr. Bradley Dworsky at Hinsdale Orthopaedics-New Lenox Office. Px2 at 7-9. Petitioner presented with a chief complaint of right knee pain. A consistent accident history is noted. Petitioner presented non-weightbearing on the right knee with an immobilizer and using crutches. Petitioner reported not being able to bear weight since the injury and slight bruising around his thigh with a defect. Dr. Dworsky's assessment was acute right quadriceps tendon rupture. Dr. Dworsky noted that Petitioner would require immediate surgical intervention to repair the quadriceps tendon and that any delay in surgical intervention may compromise Petitioner's recovery.

Petitioner underwent a primary repair of quadriceps tendon rupture of the right knee on April 20, 2018. Px2 at 10-11; Px4 at 8-9. Petitioner's postoperative diagnosis was quadriceps tendon rupture of the right knee.

Petitioner followed up with Dr. Dworsky on April 23, 2018. Px2 at 12-13. Dr. Dworsky noted that Petitioner was doing well. Petitioner was instructed to continue in the brace and immobilized for the next two weeks.

Petitioner returned to Dr. Dworsky on May 7, 2018. Px2 at 14-15. Petitioner's sutures were removed. Dr. Dworsky noted that Petitioner was doing well. Dr. Dworsky recommended starting Petitioner on gentle range of motion and light therapy for patellar mobilization. Dr. Dworsky noted that Petitioner was to continue protective weightbearing and use of the brace. Petitioner was to return in four weeks for advancement with weightbearing in therapy.

Petitioner testified that after starting therapy in May 2018, he was noticing a lot of pain in the knee and in the right ankle. Tr. at 31. Petitioner testified that he first started noticing pain in the right ankle when it became weightbearing. Tr. at 31. Petitioner described the right ankle pain as very sharp. Tr. at 31. Petitioner testified that he did not ever have any type of pain in the right ankle prior to April 17, 2018. Tr. at 31. The pain was on the medial and lateral sides of the right ankle. Tr. at 31. Petitioner testified that he had not received any kind of medical treatment or experienced any type of issues with his right ankle prior to April 17, 2018. Tr. at 32.

Petitioner returned to Dr. Shih on May 18, 2018. Px9 at 4-7, 10. Dr. Shih noted that Petitioner had been having right medial ankle pain, which began when the swelling went down in the quadricep, and that he had to wear a long leg immobilizer that sat on the ankle itself. Petitioner reported performing A to Z exercises with his ankle in physical therapy. Petitioner reported that he was unable to sleep due to the pain. Dr. Shih noted that Petitioner was non-weightbearing and presented with a short leg immobilizer and crutches. On examination of the right ankle, mild pain on inversion/eversion and medial ankle tenderness along the anterior and posterior aspect of the medial malleolus were noted. X-rays were obtained and demonstrated no fracture, bony lesion, or dislocation. A prominent plantar calcaneal spur was noted. Dr. Shih's assessment was pain in the right ankle and joints of the right foot. Petitioner was prescribed Celebrex and hydrocodone-acetaminophen.

On June 7, 2018, Dr. Dworsky noted that Petitioner presented with decreased complaints of right knee pain, but that the right ankle was Petitioner's current source of pain. Px2 at 21-23. Petitioner complained of medial and lateral ankle pain, especially when weightbearing. Petitioner denied a previous history of right ankle pain or injury. Dr. Dworsky noted that Petitioner did not have swelling or bruising of the right ankle. Dr. Dworsky noted that Petitioner was doing really well in regard to the quad tear, but that his biggest problem was his ankle. Dr. Dworsky noted that Petitioner had tenderness along the anterolateral aspect of his ankle, and that Petitioner thought that he hurt it at the same time but did not realize it until now that he was starting to bear weight on it. Dr. Dworsky noted that he was going to start Petitioner on therapy with full weightbearing, strength,

conditioning, and weaning from his brace and crutches so that he could hold full weight. Dr. Dworsky noted that given Petitioner's ankle discomfort, he thought it was a mild sprain that he was now starting to experience since he was using the ankle. Dr. Dworsky recommended focused therapy for the right ankle and gave Petitioner an ankle brace so that he could be ambulatory. Petitioner was kept off work. Petitioner testified that in June 2018, his ankle pain was getting worse. Tr. at 35.

On June 29, 2018, Petitioner requested a referral to Dr. Lawrence Kosova for a second opinion for the right ankle. Px9 at 22.

Petitioner again saw Dr. Dworsky on July 5, 2018, at which time Dr. Dworsky noted no improvement in Petitioner's right ankle symptoms. Px2 at 27-29. Dr. Dworsky noted that Petitioner was doing really well with his right knee using a cane for most of his motion. He noted that Petitioner still had some quad weakness. Dr. Dworsky noted that Petitioner's biggest issue was the right ankle, which was still bothering him. He noted that Petitioner used the right ankle brace all of the time so that he could walk. Dr. Dworsky noted that since Petitioner was having more of an issue with the right ankle that was inhibiting his ability to progress, further assessment would be necessary. Dr. Dworsky referred Petitioner to Dr. Brian Burgess. Petitioner was to continue with previous restrictions and therapy. Petitioner testified that at the time of the July 5, 2018 visit, he was still using a cane and the cane helped him walk. Tr. at 36. Petitioner testified that at the time of the July 2018 visit, his right knee was feeling better, but the right ankle did not feel better. Tr. at 36.

On July 10, 2018, Petitioner saw Dr. Lawrence Kosova at Family Podiatry Center. Px5 at 29-30. A consistent accident history is noted. It was also noted that Petitioner reported that he rolled his right ankle at the time of the work injury. On examination, pain along the posterior tibial tendon, especially in the watershed area of the tendon up to the muscle belly, as well as pain to the right peroneal tendon with palpation around the lateral malleolus were noted. Dr. Kosova also noted that Petitioner had pain with inversion of the right ankle and pain along the anterior talofibular ligament and calcaneal fibular. Petitioner did not want to be immobilized. X-rays of the right foot and right ankle were obtained and compared to right foot x-rays from 2013. The x-right foot rays demonstrated degeneration of the metatarsal head especially of the lateral aspect of the MPJ right, which was the same as the 2013 x-ray. Petitioner also had dorsal degeneration with exostosis metatarsal head right, a right plantar calcaneal spur, and talus hypertrophy dorsal head with exostosis. The right ankle x-rays were normal. Dr. Kosova's diagnoses were pain in the right ankle and joints of the right foot, right ankle sprain, right posterior tibial tendonitis, and right peroneal tendonitis. Dr. Kosova recommended icing of the area and pain medications. Dr. Kosova also recommended Petitioner use crutches, if he had them, while walking. Dr. Kosova noted that Petitioner did not want treatment at that time, because he was getting a second opinion. A right ankle MRI was ordered.

Petitioner was seen by Dr. Brian Burgess on July 12, 2018 at Hinsdale Orthopaedics-Joliet Office. Px2 at 34-37. On examination of the right ankle, pain on palpation over the medial ankle was noted, as well as maximum tenderness over the deltoid ligament. On examination of the right foot, some pain was noted over the plantar fascia ligament. Weightbearing x-rays of the right ankle were obtained and were normal. Dr. Burgess' impressions were right deltoid ligament strain, right plantar fascial strain, and concern for navicular fracture of the right foot. Dr. Burgess recommended and ordered an MRI of the ankle/hindfoot. He instructed Petitioner to ice the area to decrease edema and help with pain. Petitioner was kept off work.

Petitioner underwent a right ankle/hindfoot MRI on July 17, 2018, which demonstrated (1) evidence of a focal tenosynovitis of the distal posterior tibial tendon right, (2) mild and focal tenosynovitis of the peroneus longus tendon lateral right ankle, (3) medical and lateral collateral ligaments of the right ankle appeared to remain grossly intact and unremarkable, and (4) evidence of degenerative osteoarthritis of the subtalar joint level particularly the posterior subtalar joint facet of the right rear foot. Px2 at 38-42.

Petitioner returned to Dr. Kosova on July 24, 2018. Px5 at 27. Petitioner presented with a cane. Dr. Kosova noted that Petitioner had tenosynovitis of the posterior tibial tendon and the peroneal tendon of the right foot. Dr. Kosova recommended physical therapy for these areas. Dr. Kosova's diagnoses were right peroneal tendinitis, right posterior tibial tendinitis, and pain in right ankle and joints of the right foot.

Petitioner next saw Dr. Dworsky on July 25, 2018. Px2 at 43-45. Petitioner presented with decreased complaints of right knee pain. Dr. Dworsky noted that Petitioner was making good progress with his right knee and right quad. He again noted that Petitioner's biggest problem was the right ankle. Dr. Dworsky noted that the right ankle may slow down his right knee progress, but that he would continue to have Petitioner work on strength and conditioning to get him to a restricted duty position. Petitioner was kept off work.

Petitioner returned to work at Respondent on August 9, 2018 with the restrictions of no climbing and no squatting, given by Dr. Dorning, Respondent's Section 12 physician. Tr. at 39-40. Petitioner testified that he was assigned to the office to load and empty the copy machine and also did some mathematical equations for Respondent's billing department. Tr. at 40. Petitioner received benefits while working. Tr. at 40.

Petitioner returned to Dr. Dworsky on August 15, 2018, at which time Petitioner reported waking up with burning from the arch of the foot to the ankle. Px2 at 49-51. Petitioner had no other complaints. Dr. Dworsky noted that Petitioner was doing really well from his knee standpoint and that he was gaining movement. Dr. Dworsky again noted that the right ankle and right foot were Petitioner's biggest problems and were slowing him down in his ability to advance. Dr. Dworsky released Petitioner to return to sedentary work only.

Petitioner followed up with Dr. Kosova on August 16, 2018. Px5 at 25-26. Petitioner reported feeling better and that therapy was helping. Petitioner wanted to return to work. Dr. Kosova noted that Petitioner still had pain along the posterior tibial tendon of the right foot, and that most of his pain was in the muscle to tendon juncture of the right leg. Dr. Kosova noted that a sedentary position would be fine for Petitioner, but that he could not be on his feet or do his normal job. Petitioner reported that there was no manual work to the tendon of the leg at physical therapy. Dr. Kosova noted that Petitioner did not have pain over the lateral ankle ligaments. Dr. Kosova's diagnoses were right posterior tibial tendinitis, sprain of other ligaments of the right ankle.

Petitioner again saw Dr. Kosova on September 6, 2018. Px5 at 25. Dr. Kosova noted that Petitioner's main source of pain was the posterior tibial tendon between the medial malleolus and the navicular insertion. Dr. Kosova noted that Petitioner had attended physical therapy, and that he was able to ambulate better and did not have an abnormal gait. Petitioner was scanned for orthotics. Dr. Kosova's diagnoses were posterior tibialis tendonitis and pain in the right ankle and joints. Dr. Kosova recommended continued physical therapy. Petitioner obtained the recommended orthotics. Tr. at 43.

Petitioner followed up with Dr. Dworsky on September 12, 2018. Px2 at 55-57. Petitioner reported continued pain in the right ankle and shin, stating that he could walk about a mile before having pain. Dr. Dworsky noted that Petitioner's right knee was doing well overall, but that Petitioner complained of stiffness and pain when sitting for long periods. Regarding the right knee, Petitioner reported that physical therapy had helped and that he felt improved overall. Dr. Dworsky maintained Petitioner's sedentary work only restriction and continued Petitioner's physical therapy.

Petitioner returned to Dr. Kosova on September 27, 2018, at which time Petitioner's symptoms continued. Px5 at 21. Petitioner reported that he felt that he was stagnant with therapy and not getting better. Dr. Kosova noted that he had not been receiving reports from the physical therapists, though he had asked for them, and that there was a good chance he would be changing Petitioner's physical therapy group. Dr. Kosova noted pain to the posterior tibial tendon underneath the medial malleolus and to the posterior tibial nerve with deep palpation

right, as well as some muscle pain to the medial calf. Dr. Kosova's diagnoses were right peroneal tendinitis, pain in right ankle and joints of the foot, right posterior tibial tendinitis, and right lower limb tarsal tunnel syndrome. Dr. Kosova recommended a cortisone injection, which was administered. Petitioner testified that the injection he received on September 27, 2018 provided some relief. Tr. at 44.

Petitioner attended physical therapy at UChicago Medicine AdventHealth Bolingbrook from May 8, 2018 through September 27, 2018. Px6. Petitioner testified that his ankle got worse as he continued with physical therapy in July and August 2018. Tr. 41-42.

Petitioner saw Dr. Shih on September 28, 2018, at which time his continued complaints of pain in the medial side of the calf and the right ankle were noted. Px9 at 13-16. Dr. Shih noted that Petitioner felt that after physical therapy, he had pain in the medial calf and in the plantar fascia. On examination, right medial calf tenderness and mild tenderness along the anterior mid tibia were noted. Dr. Shih's assessment was pain in the right lower limb, with Dr. Shih noting that there may be some nerve irritation. Dr. Shih recommended deep tissue massages be held in physical therapy. Petitioner was prescribed gabapentin and Petitioner was referred to Dr. Dworsky.

Petitioner returned to Dr. Dworsky on October 10, 2018, at which time Dr. Dworsky noted that Petitioner presented for right ankle pain, which was described as dull. Px2 at 69-71. Petitioner complained of pain anteriorly, which was made better with use of the ankle brace. Petitioner reported some improvement with physical therapy, but that he could not stand or walk without pain. Dr. Dworsky noted that Petitioner's knee was doing well, but that Petitioner was having increasing problems with his calf and shin discomfort, which Petitioner reported was inhibiting his ability to do physical therapy. Dr. Dworsky recommended further workup given Petitioner's continued symptoms. A right calf MRI was ordered. Petitioner's work restriction was maintained.

Petitioner saw Dr. Kosova on October 11, 2018, at which time Dr. Kosova noted that the new therapy was helping Petitioner's right ankle, and that Petitioner was feeling substantially better after attending three sessions. Px5 at 19. Dr. Kosova's diagnoses were peroneal tendinitis, posterior tibial tendinitis, and pain in right ankle and joints of right foot. Dr. Kosova noted that Petitioner no longer had pain over the lateral ankle ligaments or peroneal tendon and that most of his pain was underneath the medial malleolus with the posterior tibial tendon. Dr. Kosova noted that the pain had substantially decreased. Dr. Kosova recommended continued physical therapy and continued use of the ankle brace.

Petitioner returned to Dr. Kosova on October 27, 2018. Px5 at 17. Dr. Kosova noted that physical therapy was helping, but that Petitioner still had pain when he walked. Petitioner reported that a week prior he was cutting grass with a push mower and a sit-down mower and was in a lot of pain the day after. On examination, Dr. Kosova noted that Petitioner had improved strength of the right posterior tibial tendon compared to the left and there was no pain at the posterior tibial tendon underneath the malleolus, however, Petitioner had some pain at the posterior tibial tendon muscle junction right medial leg. Dr. Kosova's diagnoses were pain in right ankle and joints of the foot and peroneal tendinitis. Dr. Kosova recommended additional physical therapy and orthotics to take the pressure off of the posterior tibialis tendon.

Petitioner attended 12 sessions of physical therapy at Achieve Manual Physical Therapy between October 4, 2018 and October 31, 2018. Px7. Petitioner testified that he continued therapy through the end of October 2018, and that while undergoing therapy, he noticed that his knee was okay and getting better, but that his ankle was still hurting, and the symptoms were still sharp. Tr. at 47. Petitioner testified that the right ankle symptoms continued throughout the day. Tr. at 47.

Petitioner again saw Dr. Dworsky on November 9, 2018. Px2 at 74-76. Dr. Dworsky noted that Petitioner's right ankle and right calf pain were still present. Petitioner reported improvement with physical therapy. Petitioner complained that his right leg was painful if he sat too long, and that his ankle was painful if he did not have the brace on. Dr. Dworsky noted that Petitioner was there because an Independent Medical Examination ("IME") doctor had returned him to work full duty. Dr. Dworsky noted that Petitioner had not been released by his foot and ankle specialist, and that Petitioner had otherwise done well with his right knee. Dr. Dworsky noted that once Petitioner was cleared for full activities by his foot and ankle specialist, he would release Petitioner to full duty. He noted that Petitioner was still waiting for the right calf MRI. Petitioner's work restriction was maintained.

Petitioner next saw Dr. Kosova on November 13, 2018, at which time Dr. Kosova released Petitioner to return to work without restrictions at Petitioner's request. Px5 at 15. Dr. Kosova noted that Petitioner had almost no pain anywhere in his right leg or foot at that visit, and that Petitioner was on a two-week vacation. Dr. Kosova's diagnoses were posterior tibial tendinitis and pain in right ankle and joints of right foot. Dr. Kosova suggested Petitioner use a stepstool to climb into the cabin of his truck.

On November 14, 2018, Dr. Dworsky released Petitioner to return to work full duty. Px2 at 77. An office visit note does not accompany the work status report.

Petitioner testified that he requested to be returned to work without restrictions on November 13, 2018. Tr. at 48-49. Petitioner returned to work full duty as a truck driver. Tr. at 49. Petitioner testified that after his return to work, he noticed that some days the ankle pain was very bad, and that he had to take a little longer hooking and unhooking, and that it was nice to sit down and get behind the wheel. Tr. at 49. Regarding what bothered him about the ankle on bad days, Petitioner testified that "[w]ell, if the day before I was walking or cutting the lawn at home or doing yard work or just taking a long walk with the wife and my daughter, the next day [right ankle] would hurt really bad." Tr. at 49.

Petitioner underwent an MRI of the right tibia and fibula on January 8, 2019, which demonstrated (1) nonspecific fluid signal in the fascial plane between the medial head of the gastrocnemius muscle and the soleus, which could represent muscular strain or plantaris tendon rupture, as well as the scoliosis and gastrocnemius muscles were intact and the distal musculotendinous junction of the Achilles was intact although the distal attachment of the Achilles tendon was not included, (2) mild to moderate venous varicosities and nonspecific subcutaneous edema which could indicate hydrostatic edema, and (3) normal tibia and fibula. Px2 at 78-80.

On January 18, 2019, Dr. Dworsky noted that the MRI showed what appeared to be a strain, possibly a popliteus type injury, which should resolve with time. Px2 at 81-82. Dr. Dworsky noted that in regard to the right knee, no further intervention was necessary, however, he could not release Petitioner to unrestricted duty until he had been released by his foot specialist. Dr. Dworsky noted that Petitioner would otherwise continue with no specific restrictions while at his workplace. On cross examination, Petitioner testified that he remained active, but was limited after being discharged from care for his right knee. Tr. at 83.

Petitioner followed up with Dr. Kosova on January 22, 2019. Px5 at 13-14. On examination, right posterior calf pain and swelling were noted. Dr. Kosova noted that the swelling was visible. Dr. Kosova also noted exquisite pain to the right calf with squeezing side to side and with the Thompson test. Dr. Kosova felt that it was important that Petitioner be evaluated for a clot in this area. Dr. Kosova's diagnoses were strain of muscle/tendinitis at low right leg level, pain in right ankle and joints of the foot, and posterior tibial tendinitis. Dr. Kosova recommended a venous Doppler ultrasound to rule out a blood clot.

Petitioner saw Dr. Shih on January 24, 2019. Px9 at 30-33. Petitioner complained of continued right leg pain. Petitioner reported that he was working full duty as truck driver but was taking it easy and was not jumping or pushing the dollies and was using a tractor. On examination, Dr. Shih noted that the right calf was more swollen than the left, as well as mild tenderness. Dr. Shih's assessments were strain of right gastrocnemius tendon. Petitioner was instructed to use Voltaren.

Petitioner underwent a venous Doppler ultrasound on January 26, 2019, which was negative for an acute deep venous thrombosis in the major lower extremity veins of the right leg. Px9 at 35-36, 79-80; Px6 at 442.

Petitioner returned to Dr. Kosova on February 21, 2019. Px5 at 11-12. Petitioner reported that he had been using a stationary bicycle and elliptical for an hour a few times a week without any problems. Petitioner reported that there were days that he felt good and other days where he still had a lot of pain. On examination, mild tenderness to deep palpation was noted over the posterior tibial tendon. Dr. Kosova noted that it seemed that Petitioner was improving. Dr. Kosova's diagnoses were posterior tibial tendinitis, pain in the right ankle and joints of right foot, and strain of muscle/tendinitis at low right leg level. Petitioner was fitted for orthotics.

On March 5, 2019, Petitioner reported that he had been working and was doing well. Petitioner reported that the topical pain medication was helping. Px5 at 9-10. Orthotics were dispensed. Dr. Kosova's diagnoses were posterior tibial tendinitis and strain of muscle/tendinitis at low right leg level. Petitioner testified that the orthotics helped but did not completely heal his symptoms. Tr. at 52. Petitioner followed up with Dr. Shih on May 16, 2019, for an unrelated condition, however pain in the right thigh and leg muscle aches were noted, as well as a diagnosis of strain of right gastrocnemius tendon. Px9 at 27-30. Petitioner was prescribed Voltaren.

Petitioner continued working full duty in March 2019 and October 2019. Tr. at 52-53. Petitioner testified that in October 2019, he was not having any issues performing his job duties as a truck driver, however, he still had pain in the lower right ankle on the medial and lateral sides. Tr. at 53-54. On cross examination, Petitioner testified that he was not doing well relative to the right ankle in March 2019. Tr. at 85.

Petitioner next saw Dr. Kosova on October 10, 2019. Px5 at 7-8. Dr. Kosova noted that Petitioner presented due to continued pain in his right ankle. Petitioner reported right leg and right hip pain. Petitioner reported that he recently went to Mackinac Island and did a lot of walking and rode a bicycle for the entire day. Petitioner was now experiencing pain in his right leg, right hip, and right ankle. Dr. Kosova explained the pain could be a related experience. Petitioner was wearing his orthotics. X-rays of the right ankle demonstrated some hypertrophy to the dorsal talus, a plantar calcaneal spur, and some degeneration along the talonavicular cuneiform joint dorsally. On examination, slight edema and pain on palpation on the right medial ankle shoulder and gutter ear and tenderness of the posterior tibialis tendon were noted. Dr. Kosova noted that Petitioner might have some tenosynovitis of the posterior tibial tendon. Dr. Kosova's diagnoses were pain in right ankle and joints of right foot, posterior tibial tendinitis, and enthesopathy. Dr. Kosova recommended use of topical pain medication and ordered a right ankle MRI to rule out a transchondral fracture or other injury to the right ankle. Dr. Kosova noted that Petitioner should not be riding bicycles or doing extra activity at that time until everything calmed down. He noted that there was potential for Petitioner to return to physical therapy. Dr. Kosova also discussed that a cortisone injection and oral growth factor injection might be beneficial after review of the MRI. Petitioner agreed with the October 10, 2019 note, that he had gone to Mackinac Island, he did a lot of walking the entire day, and that he was having pain in the right ankle. Tr. at 54. Petitioner testified that the pain he experienced was the same pain that he had previously. Tr. at 55. Petitioner testified that he experiences pain every time he walks. Tr. at 55. Petitioner testified that the right ankle pain had not gone away or changed in location between March 5, 2019 and the October 10, 2019 visit. Tr. at 55. On redirect examination, Petitioner agreed that he was not given any walking-related restrictions by any of his physicians at any point in time. Tr. at 91-92, 93. Petitioner testified that he walked in physical therapy and as part of the home

exercise program. Tr. at 92. Petitioner testified that it was common for him to have increased ankle pain after extended walking, and that he walked up and down hills at Mackinac Island, which he is not used to walking on uneven ground. Tr. at 92-93.

Petitioner again saw Dr. Shih on February 4, 2020. Px9 at 67-70. It was noted that Petitioner was walking about one mile per day and remained active, but that he continued to have problems with his right leg. Petitioner reported three areas of pain since the work injury: the right ankle, the right medial lower leg around the calf, and the left posterior thigh. Petitioner reported instability in the right ankle, plantar fascial pain, and right medial ankle tightness. Petitioner reported problems going down the stairs. Dr. Shih's assessment was right ankle pain and strain of the right gastrocnemius muscle. Dr. Shih prescribed Voltaren and ordered a right ankle MRI and podiatry referral.

Petitioner saw Dr. Kosova on July 14, 2020. Px5 at 5-6. Dr. Kosova noted that Petitioner continued to have right ankle pain. Dr. Kosova noted that Petitioner was not wearing orthotics and that he did not have a limp or altered gait as he walked out of the office and down the hallway. Dr. Kosova's diagnoses were posterior tibial tendinitis and sprain of other ligament of right ankle. Dr. Kosova recommended Petitioner obtain a second opinion, as there were no further treatments that he could offer Petitioner.

On July 23, 2020, Petitioner returned to Dr. Dworsky with increased right leg pain. Px2 at 83-84. Petitioner reported that after being on his feet all day and driving the truck all day, that his leg hurt from the knee down to the ankle. Petitioner reported that the ankle and calf pain never went away, and that he had been dealing with it. Dr. Dworsky noted that Petitioner had problems doing his job as a truck driver. Regarding the right knee, Dr. Dworsky noted that he had good strength and motion, and that Petitioner was at MMI. Dr. Dworsky noted that Petitioner had an IME with Dr. George Holmes, who recommended an MRI and Dr. Dworsky agreed with the recommendation. Dr. Dworsky ordered an MRI of the right lower extremity. Petitioner agreed that he had increased leg pain after being on his feet all day and driving his truck all day, and that it was common occurrence that he experienced. Tr. at 57-58. Petitioner agreed that his right ankle and calf pain had not gone away after the injury, but that he continued to work as a truck driver. Tr. at 58.

Petitioner underwent an MRI of the right ankle/hindfoot on August 9, 2020, which demonstrated (1) grade 1 sprain of the posterior tibiotalar ligament without rupture, (2) osteoarthritic changes seen within the ankle most pronounced within the posterior subtalar joint also involving the lateral tibiotalar and the talonavicular joints, and (3) mild plantar fasciitis along its calcaneal insertion. Px2 at 85-86.

Petitioner underwent an MRI of the right lower leg on August 9, 2020, which demonstrated (1) very mild myotendinous strain of the gastrocnemius with no significant tear or disruption identified and no associated soft tissue hematomas and (2) superficial and intramuscular posterior and medial venous varicosities. Px2 at 87-88.

Petitioner followed up with Dr. Dworsky on August 13, 2020, at which time Dr. Dworsky noted Petitioner's continued complaints of pain in the right ankle and lower leg. Px2 at 89-90. Dr. Dworsky also noted that Petitioner continued to work despite the pain. Dr. Dworsky noted that the MRI of the right leg showed no acute injury but did show some strain of the calf muscle which was probably secondary to his abnormal gait without injury. Dr. Dworsky noted that the right ankle MRI showed some chronic changes, especially of the deltoid ligament, as well as some changes within the calcaneus, lateral talar dome with subchondral edema and cyst formation, and plantar fascial thickening. Dr. Dworsky recommended Petitioner follow up with his podiatrist.

Petitioner again saw Dr. Kosova on August 18, 2020. Px5 at 3-4. Dr. Kosova noted that the MRI findings were mostly lateral, while Petitioner's complaints were on the medial side of the posterior ankle along the tibial tendon, which was not painful on palpation at that time. Dr. Kosova noted that Petitioner was not wearing his

orthotic and that he presented wearing sandals. Dr. Kosova noted that Petitioner was walking normally. Dr. Kosova noted that he thought that some of Petitioner's problems were due to arthritis of the joints in the ankle and subtalar joint. Dr. Kosova's diagnoses were pain in right ankle and joints of right foot, enthesopathy, and sprain of other ligaments of the right ankle. Dr. Kosova recommended a second opinion. Petitioner was still working as a truck driver at the time of the August 18, 2020 visit. Tr. at 59-60. Regarding whether he had any issues in the performance of his job duties because of his right leg or ankle, Petitioner testified that it "[s]lowed me down some a little bit walking around the yard and hooking and unhooking." Tr. at 60.

Petitioner next saw Dr. Shih on May 6, 2021, with continued complaints of right leg pain noted. Px9 at 53-56. Petitioner reported that he felt like a screwdriver was in the right leg. Petitioner wanted a referral for a second opinion. On exam, Dr. Shih noted tenderness at the right medial calf into the right medial ankle. Dr. Shih's assessment was pain in the right lower limb. Dr. Shih recommended Petitioner return to Dr. Dworsky.

On May 27, 2021, Petitioner was again seen by Dr. Dworsky for reports of continued pain at the medial aspect of his leg and ankle. Px2 at 91-92. Dr. Dworsky noted that Petitioner continued to work as truck driver and was there to discuss surgical options. Petitioner reported that he had not gotten better and that he had pain in his shin and posterior calf region since the injury. Regarding the knee, Petitioner reported that he was doing great. Dr. Dworsky referred Petitioner to Dr. Bryant Ho for a second opinion, given Petitioner's continued symptoms. Petitioner testified that his right ankle symptoms had gotten worse at the time of the May 27, 2021 visit. Tr. at 61. Petitioner testified that he experienced sharp pain after walking for a while. Tr. at 61.

On June 17, 2021, Petitioner saw Dr. Bryant Ho at Hinsdale Orthopaedics. Px2 at 93-95. A consistent accident history is noted. Dr. Ho noted that Petitioner's right ankle pain had been ongoing for three years. Petitioner described the pain as dull. Dr. Ho noted that Petitioner was able to ambulate without an assistive device. X-rays were obtained and revealed (1) no evidence of an acute fracture, (2) small dorsal spur of the talus, and (3) arthritis of the first MP joint with a dorsal spur. Dr. Ho's impressions were right posterior tibial tendinitis and right partial gastrocnemius tear. Dr. Ho noted that he had reviewed Dr. Holmes' IME report. He agreed with trialing a UCBL orthotic. A steroid injection was administered into the right posterior tibial tendon sheath. Dr. Ho recommended physical therapy with a focus on inversion strengthening, Achilles stretching, and proprioception. Petitioner was kept on a full duty work status. Dr. Ho noted that if pain persisted, he would consider proceeding with a UCBL orthotic.

Petitioner saw Dr. Shih on July 31, 2021 and August 17, 2021, following a motor vehicle accident, where he was rear-ended, on July 29, 2021. Px9 at 45-53. Cervical spine and lumbar spine complaints were noted. Right leg and right ankle complaints were not noted. Dr. Shih's diagnosis were low back strain and strain of neck muscle.

Petitioner returned to Dr. Ho on September 23, 2021. Px2 at 101-102. Dr. Ho noted that Petitioner was able to ambulate without an assistive device. Petitioner reported relief for two weeks following the steroid injection. Dr. Ho's impressions were right posterior tibial tendinitis and right partial gastrocnemius tear. Dr. Ho recommended continued physical therapy and proceeding with use of a UCBL orthotic. Petitioner was allowed to continue working full duty. Petitioner testified that the UCBL orthotic helped and that he was wearing them at arbitration. Tr. at 63-64.

On September 25, 2021, Petitioner saw Dr. Shih for complaints related to the left lower extremity. Px9 at 41-45. Dr. Shih's diagnoses were osteoarthritis of the left knee joint and strain of muscle of the lower left leg. Dr. Shih noted that these conditions arose from Petitioner guarding the right knee and favoring the right ankle. Dr. Shih noted that the medial right ankle pain was Petitioner's main source of pain. Dr. Shih recommended Diclofenac and physical therapy.

Petitioner attended 41 sessions of physical therapy at Athletico Physical Therapy between August 5, 2021 and January 11, 2022. Px8. Petitioner testified that the physical therapy he received at Athletico Physical Therapy helped a little bit, but not much. Tr. at 63.

Petitioner again saw Dr. Ho on January 17, 2022. Px2 at 103-105. Dr. Ho noted that Petitioner was able to ambulate without an assistive device. Dr. Ho noted that Petitioner had been attending physical therapy, however, he continued to report significant pain on the inside of his right foot and over the right ankle which was made worse with activity. X-rays were obtained and demonstrated (1) no evidence of acute fracture, (2) arthritis of the first MTP joint with dorsal spurring, and (3) plantar heel spur. Dr. Ho's impressions were right posterior tibial dysfunction, spring ligament tear, and right partial gastrocnemius tear. Dr. Ho noted that the August 9, 2020 MRI demonstrated a spring ligament tear, lateral talus OCD lesion with synovitis of the ankle joint, and tenosynovitis of the posterior tibial tendon. Dr. Ho noted that Petitioner had failed conservative treatment and recommended a right ankle arthroscopy and microfracture, calcaneal osteotomy, spring ligament reconstruction, and FDL transfer. Petitioner continued working full duty in January 2022. Tr. at 64-65.

Petitioner returned to Dr. Ho on October 17, 2022. Px2 at 111-130. Dr. Ho noted that Petitioner was ambulating without any assistive devices and was wearing normal shoes. Dr. Ho noted that Petitioner had completed physical therapy, but that he did not get much relief from it. Petitioner continued to have limiting pain, mostly on the inside of the ankle and foot. Dr. Ho noted that Petitioner had an IME with Dr. Pinzur on March 1, 2022. Dr. Ho noted pain on the inside of the right ankle and foot and tenderness over the posterior tibial tendon and anterior medial anterior ankle on exam. Dr. Ho's diagnoses were (1) right subtalar arthritis, (2) right tibial dysfunction, spring ligament tear, (3) right lateral talus OCD, and (4) right partial gastrocnemius tear. A lidocaine injection was administered into the subtalar joint by Dr. Ho, as recommended by Dr. Pinzur. Petitioner was released to return to work full duty. Petitioner testified that he had minimal relief following the October 17, 2022 right ankle injection. Tr. at 65-66.

On October 31, 2022, Petitioner reported minimal improvement following the October 17, 2022 injection. Px2 at 139-151. Petitioner reported that most of his pain was over the medial ankle and foot which remained unchanged after the steroid injection. Dr. Ho's impressions were unchanged. Dr. Ho's surgical recommendation continued. Petitioner was released to return to work full duty.

On January 23, 2023, Petitioner saw Dr. Shih for complaints of right ankle pain after slipping and falling at Costco on January 21, 2023. Px9 at 90-92. Dr. Shih's diagnosis was strain of the right foot. Dr. Shih noted that if Petitioner had more pain and could not stand or walk, he would need x-rays and further evaluation. Petitioner testified that on January 21, 2023, he slipped on a strawberry that was on the floor while shopping in the produce department of Costco. Tr. at 66-67. Petitioner testified that it irritated his right ankle. Tr. at 67. Regarding whether this incident changed the symptoms that he was experiencing in his right ankle, Petitioner testified that "[i]t was still the same." Tr. at 67. Petitioner testified that the January 23, 2023 visit was the only visit he had relative to the slipping incident at Costco. Tr. at 67-68. Petitioner continued to work full duty after the slipping incident at Costco. Tr. at 68.

Petitioner continued to work full duty in April 2023. Tr. at 69. Petitioner was terminated by Respondent on July 31, 2023 because Respondent filed for bankruptcy. Tr. at 60.

Petitioner followed up with Dr. Ho on November 15, 2023 and December 29, 2023. Px2 at 155-172, 175-183, 188-205, 209-216. On November 15, 2023, Dr. Ho noted that Petitioner was still having right ankle pain after a year and that it had not gotten any better. Petitioner reported that he wore the orthotics but that he still felt pain. Petitioner reported that uneven ground was the most painful on the ankle and that he was changing his gait and felt pain in the knees and hips. On December 29, 2023, Petitioner reported that prolonged walking caused an

increase in pain. Dr. Ho's impressions were unchanged, and his surgical recommendation continued. Petitioner was released to continue working full duty. Petitioner testified that he was still having the same issues with his right ankle on December 29, 2023. Tr. at 70. Petitioner testified that the pain was the same. Tr. at 70.

Petitioner looked for employment for six months following his termination, and he found employment the first week of February 2024. Tr. at 69. Petitioner testified that when he returned to work in February 2024, it took time for him to walk around, and pre-trip inspections took a little more time because of his right ankle symptoms. Tr. at 71. Petitioner was able to perform his full job duties. Tr. at 71.

Petitioner again saw Dr. Ho on February 29, 2024, at which time another injection was administered for the ankle pain, as Petitioner continued to complain of medial ankle achiness, soreness, and stiffness. Px2 at 217-228. Dr. Ho's diagnoses were unchanged. Dr. Ho's surgical recommendation continued. Petitioner was released to return to work full duty. Petitioner testified that the right ankle injection of February 29, 2024 provided him some relief for a week, but that the pain returned. Tr. at 71-72.

Petitioner returned to Dr. Dworsky on May 6, 2024 for complaints of right hip pain. Px2 at 229-254. Dr. Dworsky noted that Petitioner continued to work despite the pain he was having in his right calf and ankle. Petitioner reported that since his gait had been affected, he had been walking with an antalgic gait, which had caused an increase in pain in his right hip. Petitioner complained of anterior hip pain, worse with walking, standing, and getting up and down from his truck. Petitioner reported that his right knee was doing well and that he had no complaints. Dr. Dworsky noted that Petitioner had a lot of pain and issues with his right ankle. X-rays of the hip and pelvis were obtained and showed no significant degenerative changes or evidence of any chronic issues. Dr. Dworsky's impression was right hip strain and noted that the strain was probably brought about by his significant gait abnormality from his ankle. Dr. Dworsky noted that he felt that it was probably creating more of a tendinosis, especially the iliopsoas. Dr. Dworsky recommended a course of physical therapy. Petitioner was released to work full duty.

On May 23, 2024, Petitioner reported that the medial ankle pain had gradually returned. Px2 at 255-266. Dr. Ho noted that the steroid injection had provided relief for just under three months. Dr. Ho noted that Petitioner experienced medial ankle soreness, dull pain, and discomfort which depended on the activity level. Petitioner requested a repeat injection. Dr. Ho's diagnoses were unchanged. Dr. Ho administered another injection to the right ankle. Dr. Ho continued his surgical recommendation. Petitioner was to continue working full duty. Petitioner testified that the right ankle injection of May 23, 2024 provided him some relief for two or three weeks. Tr. at 72-73.

On July 25, 2024, Petitioner reported that the previous injection had helped a lot and had given him good relief. Px2 at 297-301. Petitioner reported that he still felt achy and stiff at the ankle in the mornings or when he stood up after sitting for an extended period. Dr. Ho's diagnoses were unchanged. Dr. Ho administered another injection to the right ankle. Dr. Ho continued his surgical recommendation. Petitioner was to continue working full duty. Petitioner testified that the right ankle injection of July 25, 2024 provided him some relief for only a couple of weeks. Tr. at 74.

On August 22, 2024, Dr. Ho noted that the most recent injection was effective. Px2 at 330-338. Dr. Ho's diagnoses were unchanged. Dr. Ho's surgical recommendation continued. Petitioner was to continue working full duty.

Petitioner returned to Dr. Ho on October 24, 2024. Px2 at 360-362. Petitioner reported acute onset of pain in his right posterior tibial tendon. Petitioner reported that the right medial foot and ankle pain was worse each morning. Dr. Ho noted that Petitioner retired from truck driving on August 26, 2024. Dr. Ho's diagnoses were

unchanged. Dr. Ho administered another injection to the right ankle. Dr. Ho's surgical recommendation continued. Petitioner testified that the right ankle injection of October 24, 2024 provided him some relief for a few weeks, but that the pain returned. Tr. at 71-72.

Petitioner testified that as of the date of arbitration, the surgery recommended by Dr. Ho had not been authorized. Tr. at 75.

Current Condition

Petitioner testified that he still has pain in the knee, pain in the hip, and pain in the ankle, and that walking is a little hard because he is a little older. Tr. at 76. Petitioner testified that he is more active and walks more, but that he has a little discomfort, and he knows that his walking is not right. Tr. at 75-76. Petitioner does not run or jump. Tr. at 76. Petitioner makes sure to hold onto both railings when going down stairs, and he sometimes only takes one stair at a time. Tr. at 76. Petitioner does not trust his right ankle and he still experiences sharp pain on the medial and lateral sides of the right ankle. Tr. at 76. Petitioner testified that he experiences pain in the right ankle when he first steps out of bed and that he has to walk for a while so that the pain subsides a little bit. Tr. at 76-77. Petitioner takes over-the-counter pain medication two to three times a day, such as Aleve, to relieve the pain. Tr. at 77. Petitioner testified that the pain in his right ankle is the same. Tr. at 77. Petitioner testified that he needs to rest the day after yard work or running the lawnmower because his right leg hurts really bad, especially the ankle. Tr. at 77.

On cross examination, Petitioner testified that he returned to work full duty without restrictions and continued to work full duty until Respondent went bankrupt. Tr. at 82. Petitioner testified that he would sometimes work 60 or more hours per week. Tr. at 82-83. Petitioner found work as a truck driver six months after being terminated by Respondent. Tr. at 83. Petitioner retired on August 26, 2024. Tr. at 83. Petitioner testified that he uses the orthotics all the time and had them in both his shoes at the time of arbitration. Tr. at 87-88. Petitioner cannot wear sandals, and wears shoes or boots because of the orthotics. Tr. at 88. Petitioner continues to use a cane on and off for support. Tr. at 88-89.

February 8, 2024 Narrative Report by Dr. Bryant Ho

Dr. Ho prepared a narrative report dated February 8, 2024. Px3. Dr. Ho opined that at that time, Petitioner had a diagnosis of right posterior tibial dysfunction, spring ligament tear, and a lateral talus OCD lesion, which were directly caused by the work injury. Dr. Ho opined that Petitioner had failed conservative treatment, including physical therapy, steroid injections, and orthotics. Dr. Ho noted that Petitioner had continued activity limited pain. Dr. Ho opined that without surgery, Petitioner would continue to have pain and limitations with activity, and that the surgery was reasonable and medically necessary at that time.

Dr. Ho opined that Petitioner did have subtalar arthritis that was likely a preexisting condition that was likely exacerbated by the work injury, but that it was not currently causing Petitioner any problems.

Dr. Ho agreed with Dr. Pinzur's conclusion that Petitioner had arthritis of the ankle, subtalar joint, and talonavicular joint that was likely an exacerbation of a preexisting condition. Dr. Ho noted that the acute exacerbation had resolved and was not causing Petitioner's continued right ankle pain. Dr. Ho noted that the current cause of Petitioner's pain was from the right talus OCD lesion, posterior tibial tendon dysfunction, and spring ligament tear. Dr. Ho disagreed with Dr. Pinzur's concern of aseptic necrosis of the talus. Dr. Ho disagreed with Dr. Pinzur's opinion that Petitioner would not benefit from an ankle arthroscopy and microfracture surgery. Dr. Ho noted that he agreed with Dr. Pinzur's recommendation of a diagnostic injection

into the subtalar joint, which was administered, with reported minimal relief, which demonstrates that Petitioner's pain is not from the subtalar arthritis.

Dr. Ho disagreed with Dr. Dorning's opinion that Petitioner's right ankle pain was not caused by the work injury. Dr. Ho noted that Petitioner had no right ankle pain prior to the work injury, and that he had had right ankle pain since the work injury that had not resolved. Dr. Ho noted that the July 17, 2018 MRI demonstrated tenosynovitis of the posterior tibial tendon which was consistent with posterior tibial tendon dysfunction from the work injury. Dr. Ho noted that the August 9, 2020 MRI demonstrated a spring ligament tear and talus OCD lesion which were not presented, and that these new findings are consistent with progressive worsening of the Petitioner's right ankle after he failed to respond to previous treatments following the work injury. Dr. Ho agreed with Dr. Dorning's conclusion that the work injury caused a temporary exacerbation of the preexisting subtalar arthritis that had resolved. Dr. Ho agreed with Dr. Dorning's conclusion that Petitioner would benefit from surgery.

Section 12 Examination Reports by Dr. Michael D. Dorning

Dr. Dorning performed an IME of Petitioner on July 19, 2018 regarding a right knee injury. Rx1. Dr. Dorning reviewed the April 18, 2018 MRI images, which showed a complete right quadriceps tendon tear and he agreed with the radiologist's interpretation. Dr. Dorning performed a physical examination of Petitioner's right knee. Dr. Dorning's assessment was status post three months right quadriceps tendon repair. As to the nature and extent of Petitioner's work injury, Dr. Dorning opined that Petitioner sustained a right quadriceps tendon rupture on April 17, 2018. Dr. Dorning opined that the work injury was the cause of Petitioner's diagnosis of status post three months right quadriceps tendon repair. Dr. Dorning opined that all treatment and testing had been reasonable, necessary, and related to work injury. Dr. Dorning recommended Petitioner undergo physical therapy two to three times per week for six to eight additional weeks for quadriceps strengthening. Dr. Dorning opined that Petitioner could not return to work as a semi-truck driver at that time and noted Petitioner's physical limitations as no climbing or squatting. Dr. Dorning opined that Petitioner not reached MMI and that he would reach MMI six months post-surgery.

Dr. Dorning prepared a report regarding his review of additional records dated November 8, 2018. Rx2. Dr. Dorning noted that based on his review of additional records, it appeared that Petitioner had been treating for a right ankle condition and that he did not evaluate Petitioner regarding his right ankle. Dr. Dorning opined that it appeared from the medical records that Petitioner's current diagnosis was right ankle pain and subtalar arthrosis, which was not related to the April 17, 2018 work injury. Dr. Dorning opined that the April 17, 2018 work injury was a right quadriceps tendon tear that was surgically repaired on April 20, 2018, and had progressed nicely since surgery. Dr. Dorning opined that regarding the work injury, Petitioner's diagnosis was status post six and a half months right quadriceps tendon repair with good recovery. Dr. Dorning opined that all treatment regarding the right knee, including postoperative physical therapy, is related to the work injury. Dr. Dorning noted that he did not believe that the evaluation for the right ankle was related to work injury of the right quadriceps tendon tear. Dr. Dorning again noted that he did not evaluate Petitioner at the time of the July 19, 2018 IME for any type of right ankle injury, and that the right ankle condition and treatment was not related to the work injury. Dr. Dorning opined that no additional treatment was necessary regarding the right knee. Dr. Dorning opined that no physical limitations or work restrictions were needed as a result of the work injury. Dr. Dorning opined that Petitioner had reached MMI regarding the work injury on October 20, 2018, six months post-surgery. Dr. Dorning noted that he was unable to comment on any treatment regarding the right ankle, in that he did not evaluate Petitioner for a right ankle injury, and therefore, he did not believe the right ankle was related to the work injury. Dr. Dorning opined that Petitioner could return to work without restrictions.

Dr. Dorning performed an IME on April 11, 2023 regarding Petitioner's right foot and right ankle. Rx6. Dr. Dorning reviewed the July 17, 2018 right ankle MRI images and radiology report, as well as the August 9, 2020 right ankle MRI. Dr. Dorning reviewed the IME report by Dr. Holmes, as well as the IME report by Dr. Pinzur. On examination of the right ankle, Dr. Dorning noted tenderness to palpation over the posterior tibialis tendon, pain medially with inversion, and complaints of subjective pain when bearing full weight on the right foot and standing on toes. Dr. Dorning assessed right foot subtalar degenerative joint disease with subjective posterior tibialis tendinitis. Dr. Dorning opined that the work accident was not a causal factor in the development of Petitioner's condition. Dr. Dorning noted that in reviewing the July 17, 2018 MRI, there was only evidence of focal tenosynovitis in the distal posterior tibial tendon and evidence of osteoarthritis of the subtalar joint. Dr. Dorning opined that the only possible preexisting condition that could have been present was the subtalar arthritis. Dr. Dorning opined that it was certainly possible that the accident had a temporary aggravation of subtalar arthritis that eventually resolved. Dr. Dorning did not see an injury to the posterior tibialis tendon. Dr. Dorning believed that Petitioner could return to work full duty without restrictions. Dr. Dorning noted that regardless of causation, the surgery that Dr. Ho recommended would address wear and tear of the talus and a possible OCD injury along with posterior tibialis tendon dysfunction, as well as the spring ligament for the arch. Dr. Dorning noted that he did not believe that Petitioner's right foot and ankle pain were related to the work injury, however, if Petitioner continued to complain of right foot and ankle pain, then Dr. Ho's recommended surgical procedure would attempt to address the pain. Dr. Dorning opined that the medical treatment Petitioner had received thus far was reasonable and necessary. Dr. Dorning opined that Petitioner had reached MMI.

Dr. Dorning prepared an addendum report dated June 3, 2024, wherein he addresses Dr. Ho's disagreement with his causation opinion. Rx7. Dr. Dorning opined that there was no evidence of a talar injury that occurred from the work injury on April 17, 2018. Dr. Dorning noted that the MRI showed a mild distal tenosynovitis of the posterior tibialis tendon that would be related to the injury. Dr. Dorning noted, however, that the August 9, 2020 MRI was read out as the posterior tibialis tendons maintaining normal caliber and signal intensity without associated fluid, and that there was no mention of a spring ligament injury in either MRI. Dr. Dorning opined that therefore, he did not believe that an injury occurred to Petitioner's right ankle that would entail a surgery of a microfracture of the talus with calcaneal osteotomy, spring ligament reconstruction, and an FDL transfer.

Section 12 Examination Report by Dr. George B. Holmes, Jr.

Dr. Holmes performed an IME regarding a right foot injury sustained on April 17, 2018. Rx3. Dr. Holmes performed a physical examination of Petitioner's bilateral calves, ankles, and feet. Dr. Holmes opined that Petitioner had some discomfort in the area of the posterior tibial tendon and medial malleolus, however, the findings on exam, x-rays, and MRI were relatively mild. Dr. Holmes opined that it was possible that the right ankle injury was related to the work accident. Dr. Holmes, however, noted that the findings on MRI, x-ray, and examination were essentially benign and did not demonstrate any operable problem with the foot or ankle at that point, and therefore, the causal relationship was one of symptomology. Dr. Holmes noted that he could not demonstrate any specific injury that could be attributable to the initial injury. Dr. Holmes noted that he did not find any evidence in the review of records and in discussion with Petitioner of any preexisting condition or conditions pertaining to his right foot. Dr. Holmes noted that at that time, Petitioner had returned to work full duty without restrictions and opined that Petitioner should be able to continue working full duty into the future at that time. Dr. Holmes recommended a repeat MRI and a UCBL orthotic, while noting that at that time, he did not have sufficient connectivity between causation and Petitioner's current complaints and could not give a specific diagnosis at that time. Dr. Holmes opined that the treatment rendered to Petitioner for the right ankle and been reasonable and necessary, while also noting that he did not think Petitioner required further treatment besides trying a UCBL orthotic. Dr. Holmes opined that Petitioner had reached MMI.

Section 12 Examination Reports by Dr. Michael Pinzur

Dr. Pinzur performed an IME on March 1, 2022. Rx4. Dr. Pinzur noted that he reviewed three MRIs of Petitioner's ankle, with the most recent being the 2018 MRI, and that Petitioner had consistent findings of talonavicular and subtalar arthritis as well as two areas of signal change within the talus consistent with aseptic necrosis of the talus. Dr. Pinzur noted that Petitioner clearly had evidence of peritalar arthritis as well as a question of aseptic necrosis of the talus, and that both injuries could be traumatically induced. Dr. Pinzur opined that it was impossible to know whether these conditions preexisted the fall that precipitated the quadriceps rupture. Dr. Pinzur further opined that it certainly would be consistent with the history that the fall at least exacerbated a preexisting condition or may have worsened a preexisting condition.

Dr. Pinzur prepared an addendum to his March 1, 2022 report, which answered questions posed to him in a letter by Respondent's counsel. Rx5. Dr. Pinzur opined that Petitioner had a diagnosis of peritalar (hindfoot) arthritis and possible aseptic necrosis of the talus of the right foot. Dr. Pinzur noted that it was impossible to determine whether this condition predated the work injury or was caused by the work injury. Dr. Pinzur opined that if Petitioner had no symptoms prior to the injury and developed symptoms following the injury, then Petitioner's current condition was most likely an exacerbation of a preexisting hindfoot arthritis, noting that Petitioner had some evidence of arthritis of the hindfoot on the first MRI taken after the work injury. Dr. Pinzur noted that Petitioner had some element of preexisting arthritis of the right hindfoot, which was common, and that the key factor was whether Petitioner was symptomatic prior to the injury. Dr. Pinzur noted that if Petitioner was asymptomatic prior to the work injury, or mildly symptomatic, and his condition became worse following the injury, then it was most likely an exacerbation of a preexisting condition. Dr. Pinzur noted that based on the radiographs performed when he saw Petitioner, Petitioner's condition had worsened with time and thus, his worsening was not temporary. Dr. Pinzur noted that Petitioner was currently working, but that he developed severe symptoms after a full day of work. Dr. Pinzur noted that it was clear that Petitioner was capable of performing his job responsibilities but was symptomatic the next day. Dr. Pinzur did not feel that an FCE would provide any further insight. Dr. Pinzur opined that Petitioner was capable of working but might benefit from either a shorter day or less days per week. Dr. Pinzur did not think that Petitioner would benefit from ankle arthroscopy and microfracture, and recommended a trial injection of the subtalar joint complex with steroid and anesthetic to determine whether hindfoot arthrodesis would be beneficial. Dr. Pinzur opined that Petitioner's treatment had been reasonable and necessary. Dr. Pinzur opined that without further treatment, Petitioner had reached MMI, noting that with the recommend treatment of a trial injection, Petitioner had the potential to be improved.

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). 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. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with

his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct 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:

The Arbitrator initially notes that there is no dispute as to accident. Ax1.

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. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). 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 if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator addresses causation as it relates to the injuries for which Petitioner seeks prospective medical care, specifically, for the right ankle. See Tr. at 10-11.

Having considered all the evidence, the Arbitrator finds that Petitioner's current right ankle condition of ill-being is causally related to the April 17, 2018 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Comprehensive Care, (2) the records of Dr. Christine Shih, (3) the records of Dr. Bradley Dworsky, (4) the records of Dr. Lawrence Kosova, (5) the records of Dr. Brian Burgess, (6) the records of Dr. Bryant Ho, (7) the physical therapy records of UChicago Medicine AdventHealth Bolingbrook, Achieve Manual Physical Therapy, and Athletico Physical Therapy, (8) the fact that none of the records in evidence reflect that Petitioner was actively treating for a right ankle condition immediately prior to April 17, 2018, (9) Petitioner's credible denial of issues with or treatment for his right ankle prior to April 17, 2018, which is supported by the medical evidence, and (10) Petitioner's credible testimony regarding the mechanism of injury and onset of symptoms following the April 17, 2018 injury. The Arbitrator notes that Petitioner's right leg was immobilized after sustaining a right quadricep tendon rupture on April 17, 2018 and remained immobilized after undergoing a quadricep tendon rupture repair on April 20, 2018. The Arbitrator notes that Petitioner's right ankle symptoms are consistently documented in the record after Petitioner began weightbearing on the right leg following the quadricep tendon rupture repair. The overall record demonstrates that Petitioner was in condition of good health immediately prior to April 17, 2018 and that he was able to work full duty and without restrictions immediately prior to the work accident.

Dr. Ho has diagnosed right posterior tibial dysfunction, a spring ligament tear, and a lateral talus OCD lesion and opines that these conditions are causally related to the work injury. Dr. Ho opines that Petitioner has failed conservative treatment and that without surgical intervention, Petitioner will continue to have pain and limitations with activity. Dr. Ho has recommended a right ankle arthroscopy and microfracture, calcaneal osteotomy, spring ligament reconstruction, and FDL transfer.

The Arbitrator has considered the opinions of Dr. Holmes, Dr. Pinzur, and Dr. Dorning. The Arbitrator relies on the opinions of Dr. Ho and finds that his opinions are supported by and most consistent with the overall record. The Arbitrator notes that Dr. Ho has considered the chain of events in this case noting that Petitioner's right ankle became symptomatic following the April 17, 2018 injury. The Arbitrator is not persuaded by the opinions of Dr. Dorning, and notes that while Dr. Dorning opined that Petitioner's right ankle condition is not causally related to the April 17, 2018 injury and that he did not see an injury to the posterior tibialis tendon, he concedes that (1) it was possible that Petitioner suffered a temporary aggravation of subtalar arthritis and (2) that the July 17, 2018 MRI showed mild distal tenosynovitis of the posterior tibialis tendon that would be related to the work injury. The Arbitrator notes that the August 9, 2020 MRI demonstrated a grade 1 sprain of the posterior tibiotalar ligament without rupture, which Dr. Dorning did not acknowledge. The Arbitrator further notes that Dr. Holmes concedes that the right ankle injury is related to the work injury and that "the causal relationship is one of symptomology..." Additionally, the Arbitrator notes that Dr. Pinzur opined that the preexisting arthritis of the hindfoot was likely exacerbated by the April 17, 2018 injury, and also opined that based on the radiographs that he performed, Petitioner's condition had worsened with time and that it was not a temporary exacerbation. The Arbitrator notes that while Dr. Pinzur opined that Petitioner would not benefit from an arthroscopy or microfracture, he recommended a trial injection of the subtalar joint complex with steroid and anesthetic to determine whether a hindfoot arthrodesis would be beneficial. Notably, Petitioner underwent the injection recommended by Dr. Pinzur on October 17, 2022 and experienced minimal relief.

The Arbitrator further notes that there is no evidence of any reinjury or other intervening event that would sever the chain of causation. The Arbitrator acknowledges that on October 10, 2019, Petitioner complained of right hip pain and continued right ankle pain after walking a lot while at Mackinac Island. The Arbitrator notes that at that time, Dr. Kosova's diagnoses were unchanged. The Arbitrator also notes that Petitioner credibly testified that (1) the pain he experienced was the same pain that he had previously experienced, (2) he experiences pain every time he walks, (3) the right ankle pain had not gone away or changed in location between March 5, 2019 and the October 10, 2019 visit, and (4) it was common for him to have increased ankle pain after extended walking. The Arbitrator also acknowledges that Dr. Shih's January 23, 2023 office visit note documents Petitioner's complaints of right ankle pain after slipping and falling at Costco on January 21, 2023, and that Dr. Shih diagnosed a strain of the right foot. The Arbitrator notes that no diagnostic studies were performed, and Petitioner was not placed on any restrictions. The Arbitrator further notes that Petitioner credibly testified that while this incident irritated his right ankle, his right ankle symptoms were still the same following this incident and had not changed. Petitioner also credibly testified that this was the only visit he had relative to the slipping incident, and his testimony is supported by the medical evidence. The Arbitrator notes that Petitioner also credibly testified that he continued to work full duty after this incident until terminated by Respondent on July 31, 2023. Lastly, the Arbitrator notes that while Petitioner returned to work full duty in November 2018, the evidence demonstrates that he continued to experience right ankle pain and difficulty while performing his duties as a truck driver.

In resolving the issue of causation, the Arbitrator further finds that Petitioner is not at MMI for his current right ankle condition of ill-being.

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:

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable, necessary, and casually related to the work accident, and that Respondent has not paid all appropriate charges. The Arbitrator notes that Dr. Holmes, Dr. Pinzur, and Dr. Dorning agree that the treatment Petitioner received for his right ankle condition was reasonable and

necessary. Accordingly, the Arbitrator further finds that all bills, as provided in Px10, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Per the Parties' stipulation, Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses. See Tr. at 8.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Ho.

The Arbitrator notes that on January 17, 2022, Dr. Ho recommended a right ankle arthroscopy and microfracture, calcaneal osteotomy, spring ligament reconstruction, and FDL transfer after failing conservative treatment, and Dr. Ho has maintained his surgical recommendation as of February 8, 2024. Accordingly, the Arbitrator finds that Petitioner is entitled to treatment as recommended by Dr. Ho, including right ankle arthroscopy and microfracture, calcaneal osteotomy, spring ligament reconstruction, and FDL transfer, all of which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.



ANA VAZQUEZ, ARBITRATOR

MAY 9 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022910
Case Name	Kayla Loyd v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0006
Number of Pages of Decision	23
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/15/2026

/s/ Amylee Simonovich, Commissioner

Signature

23 WC 022910

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

KAYLA LOYD,

Petitioner,

vs.

NO: 23 WC 022910

STATE OF ILLINOIS -
 CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 11, 2025 is hereby affirmed and adopted.

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

23 WC 022910

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

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

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

January 15, 2026

O: 01/13/26

AHS/ma

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022910
Case Name	Kayla Loyd v. State of Illinois - Chester Mental Health Center
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	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 7/11/2025

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF JULY 8, 2025 4.15%

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission



JULY 11 2025

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

STATE OF ILLINOIS)
)SS.
 COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kayla Loyd
 Employee/Petitioner

Case # **23** WC **22910**

v.

Consolidated cases: _____

State of Illinois - Chester Mental Health Center
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville, Illinois**, on **April 22, 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 24, 2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$59,809.74**; the average weekly wage was **\$1,150.18**.

On the date of accident, Petitioner was **32** 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 **\$14,496.65** for TTD and extended benefits, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$14,496.65**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$766.79/week for 91 2/7 weeks, commencing July 24, 2023 through April 22, 2025, as provided in Section 8(b) of the Act.

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

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Blake, specifically, continuing care for Petitioner's CRPS condition.

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

JULY 11, 2025

PROCEDURAL HISTORY

This matter proceeded to trial on April 22, 2025, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's left knee and right ankle conditions; 2) payment of medical expenses; 3) entitlement to temporary total disability (TTD) benefits; 4) entitlement to prospective medical care, specifically continuing pain management treatment.

The parties stipulated that the Respondent will pay any medical expenses awarded directly to the providers.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 32 years old and employed with Respondent as a security therapy aide. (AX1, T. 11) On July 23, 2023, two patients got into an altercation, and the Petitioner fell while trying to restrain them, injuring her left knee. (T. 12) She denied having previously injured her left knee or seeking medical treatment or having restrictions related to her left knee. (Id.) She was working full duty at the time of the accident. (Id.)

On July 26, 2023, the Petitioner went to the emergency department at Red Bud Hospital complaining of pain in her left knee. (PX3) She described the accident and stated she was unsure if she fell directly on her knee or twisted it. (Id.) X-rays showed probable joint effusion but no fracture or dislocation. (Id.) The Petitioner was diagnosed with a pain in the left knee and contusion of the left knee, prescribed an anti-inflammatory and instructed to use crutches and follow up with her primary care physician. (Id.)

The Petitioner saw her primary care physician, Dr. David Szoke at Community Healthcare, on August 2, 2023, and reported that although she had 25 percent improvement in her knee, it was still stiff and painful with range of motion. (PX4) Dr. Szoke examined her and noted that she was

unable to bring her knee to full extension and flexion, that she had lateral peripatellar edema with bruising, tenderness along the lateral joint line and positive tests for meniscal damage and medial collateral ligament (MCL) strain. (Id.) He diagnosed a left knee contusion, lateral joint line tenderness and stiffness with mildly compromised knee extension. (Id.) He kept the Petitioner off work and recommended continued use of the anti-inflammatory and knee brace. (Id.) At a follow-up on August 8, 2023, the Petitioner reported approximately 50 percent improvement in her knee, but she still had stiffness and discomfort with extension. (Id.)

On August 17, 2023, the Petitioner presented to the office of Dr. Matthew Bradley at Metro East Orthopedics with symptoms of left knee pain. (PX5) She described the work accident. (Id.) An examination showed pain to palpation over the patella and lateral tibia, active range of motion from 0 to 105 degrees, mild pain or crepitus with patellar compression testing, and 4/5 quad strength. (Id.) X-rays were normal. (Id.)

An MRI arthrogram showed no meniscal or ligamentous injury and no osseous abnormality. (PX6) Dr. Bradley reviewed the MRI and diagnosed left knee patellar tendonitis and contusion. (PX5) The Petitioner was placed in a neoprene hinged knee sleeve and given a prescription for diclofenac (a nonsteroidal anti-inflammatory), orders for physical therapy and work restrictions of desk work only and wearing the brace at all times. (Id.) Dr. Bradley opined that the work accident resulted in the Petitioner's injury and need for further treatment. (Id.)

The Petitioner began physical therapy at ApexNetwork Physical Therapy on August 30, 2023, at which time the therapist noted she had 6/10 pain. (PX7) She was functionally limited with squatting, kneeling, walking, and transferring from sitting to standing. (Id.) At her October 3, 2023, physical therapy re-evaluation, she rated her pain at a 5/10 and was functionally restricted with squatting and prolonged walking. (Id.)

On October 12, 2023, the Petitioner reported to Dr. Bradley that she had no significant change in her symptoms. (PX5) On exam, she had medial patellar tendon pain to palpation, active range of motion from 0 to 110 degrees, mild pain or crepitus upon patellar compression testing and 4+/5 quad strength. (Id.) Dr. Bradley recommended diclofenac gel to be placed directly over the patellar tendon and prescribed lidocaine. (Id.) Work restrictions were continued. (Id.)

The Petitioner testified that the physical therapy helped “a little bit.” (T. 14) She said her knee hurt and would swell. (Id.) At a physical therapy visit on November 22, 2023, she reported that she was walking up the steps to her porch when her left knee gave out and she fell, spraining her right ankle. (PX7) At that time, she rated her left knee pain at 8/10. (Id.) At arbitration, the Petitioner acknowledged injuring her right ankle. (T. 15) She said she went outside, and her knee gave out, causing her to fall and twist her ankle. (Id.) She denied tripping over anything. (Id.) She went to Murphysboro Health Center on December 1, 2023, and reported slipping at home and twisting her ankle. (PX8) She was diagnosed with a sprain of the right ankle, and it was recommended that she begin physical therapy on her ankle. (Id.)

On December 17, 2023, the Petitioner saw Dr. Bradley and reported that a few days prior, she was walking on her porch when she had severe pain and a stabbing sensation in her left knee that caused her to fall and sprain her right ankle. (PX5) The Petitioner reported that her knee pain was improved with the gel but relief lasted only two or three hours. (Id.) An examination showed lateral greater than medial patellar tendon pain to palpation, active range of motion from 0 to 115 degrees, mild pain or crepitus with patellar compression testing, and 4+/5 painful quad strength testing. (Id.) Dr. Bradley added the ankle sprain to his diagnoses. (Id.) He stated that although the Petitioner responded well to the gel, that was not doing much to treat her underlying etiology. (Id.) He recommended diclona patches (diclofenac and lidocaine), continued therapy and use of a

patellar strap and knee brace. (Id.) He continued work restrictions. (Id.) The Petitioner testified that her right ankle did well after therapy. (T. 16)

At a visit on February 19, 2024, Dr. Bradley felt the Petitioner was doing better with respect to her patellar tendonitis but continued to have pain along the lateral patellofemoral facet, along with a popping or clicking sensation. (Id.) He indicated that her mechanism of injury, exam and symptoms were consistent with a lateral patellofemoral plica. (Id.) Dr. Bradley performed a corticosteroid injection for diagnostic and therapeutic purposes and continued restrictions. (Id.)

The Petitioner told Dr. Bradley on April 15, 2024, that the injection gave her three to four hours of excellent pain relief, but her symptoms recurred. (PX5) Dr. Bradley diagnosed left knee pain with possible lateral patellar plica. (Id.) He stated that the Petitioner's symptoms were consistent with a plica and that she tried significant nonoperative treatment but did not gain sustained relief or return to baseline function. (Id.) He recommended diagnostic arthroscopy and continued work restrictions. (Id.)

On April 24, 2024, Dr. Bradley performed the arthroscopy with lateral patellofemoral plicectomy and lateral release. (PX5, PX9, PX12) Intraoperatively, he noted that 25-30 degrees of the lateral patellofemoral plica had engaged in the lateral patellofemoral facet. (Id.) He debrided this down to normal appearing. (Id.) He noted that the patella had a slight lateral tilt and performed a lateral release, which allowed the patella to have a normal appearance. (Id.) The Petitioner testified that after the surgery, her knee was about the same. (T. 17)

The Petitioner underwent an ultrasound of the lower extremity at Red Bud Regional Hospital on April 30, 2024, that found left posterior tibial and possibly peroneal deep vein thrombosis (DVT). (PX3) She was sent home with a prescription for a blood thinner. (Id.) Later that day, she had chest pains and eventually was airlifted to St. Louis University, where she was

treated for blood clots. (PX10, PX11) On May 1, 2024, the Petitioner followed up with Physician Assistant Lisa Baranski at Shawnee Health Care. (PX8) An examination of the left leg showed abnormal motor strength, tenderness, limited range of motion, left lower limb edema, erythema and warmth. (Id.) PA Baranski prescribed a blood thinner and pain medication. (Id.)

The Petitioner saw Dr. Bradley on May 10, 2024. (PX5) He noted that the Petitioner had not been able to mobilize significantly due to pain and swelling in her left lower extremity. (Id.) He diagnosed status post left knee arthroscopy complicated by DVT. (Id.) He ordered physical therapy and kept the Petitioner on restrictions of desk work only with the use of crutches. (Id.) The Petitioner began physical therapy on May 24, 2024, and continued to treat for her DVT at SIH Vascular Surgery. (PX7)

On June 10, 2024, the Petitioner returned to Dr. Bradley and indicated that she was still unable to bend her knee and that bending same was painful. (PX5) She was participating in therapy but was not making progress. (Id.) On exam, she had mild effusion, lateral peri-patellar pain to palpation, active range of motion from 0 to 20 degrees, passive range of motion from 0 to 45 degrees, 4/5 quad strength, and weak pulses and swelling at the foot/ankle. (Id.) Dr. Bradley performed an injection to Petitioner's left knee to help with pain and gave her a prescription for an anti-inflammatory. (Id.) He wrote that if she did not have significant improvement in three weeks, he would consider a manipulation under anesthesia. (Id.) He continued work restrictions. (Id.)

At her last physical therapy visit on June 26, 2024, the Petitioner complained of 6/10 pain, continued to ambulate with crutches and was non-weight-bearing on the left lower extremity despite encouragement by the therapist to try to progress to weight bearing. (PX7)

On June 27, 2024, the Petitioner reported to Dr. Bradley that she was not doing well, and she could not move her knee past 15 degrees. (PX5) The Petitioner showed him photographs of

her leg depicting severe darkness, mottling, and purple discoloration. (Id.) Dr. Bradley diagnosed left knee fibrosis status post arthroscopy and left lower extremity mottling and discoloration. (Id.) He indicated that she had significant capsulitis and recommended a manipulation under anesthesia with a steroid injection to help her knee move better and allow her to more easily participate in therapy. (Id.) He also said there was “something greater” going on due to the significant changes in her skin. (Id.) He did not see the skin changes at that time but said the photos clearly demonstrated it. (Id.) He referred her to a pain management specialist and continued work restrictions. (Id.)

Dr. Bradley performed an examination and manipulation of Petitioner’s left knee under anesthesia on July 19, 2024. (PX5, PX9, PX12) While the Petitioner was under anesthesia, Dr. Bradley was able to easily get full extension when he flexed the hip to 90 degrees and to 105-110 degrees without significant force. (Id.) He gave the Petitioner an injection of corticosteroid and regional anesthetic and was able to obtain 125+ degrees of flexion as well as full extension. (Id.) The Petitioner testified that her knee stayed the same afterwards. (T. 17-18)

At a follow-up with Dr. Bradley on August 5, 2024, the Petitioner reported that her knee could not move after the manipulation. (Id.) Dr. Bradley noted that she held her leg in a fully extended position with her quad tightening and reported pain over the entire front part of her knee. (Id.) On exam, she had pain to light touch over the anterior knee, active range of motion from 0 to 30 degrees, passive range of motion from 0 to 40 degrees, mild pain or crepitus with patellar compression testing, and weak pulses with swelling of the foot and ankle. (Id.) Dr. Bradley took the Petitioner off work and referred her to Dr. Robert Hagan, a peripheral nerve surgeon at Neuropax Clinic, to see if nerve pain might have been inhibiting her ability to bend her knee. (Id.)

On September 16, 2024, Petitioner presented to Dr. Hagan, who took the history of her work injury, medical treatment and progress. (PX13) On exam, she had significant decrease in flexion of the left knee to 30 degrees and focal tenderness over the lateral and medial retinacular and infrapatellar nerves. (Id.) Dr. Hagan diagnosed left medial and lateral retinacular and infrapatellar neuropathy that was directly related to her fall at work. (Id.) He recommended diagnostic nerve blocks and provided a compression sock for continued swelling. (Id.)

At a follow-up with Dr. Bradley on October 21, 2024, the Petitioner had no change in her symptoms. (PX5) Dr. Bradley did not believe her pain was emanating from inside her knee, as he was able to move her knee easily during manipulation. (Id.) That same day, Dr. Hagan performed the nerve block injections. (PX13) The Petitioner testified that the injections helped for about two hours. (T. 18)

On November 5, 2024, the Petitioner underwent a Section 12 examination by Dr. Timothy Farley, an orthopedic surgeon at MotionOrthopaedics. (RX2) Dr. Farley took a history of the Petitioner's injury and treatment. (Id.) He performed an examination, during which the Petitioner kept her left leg locked in full extension, which prevented him from testing for mobility of the patella, testing ligaments or perform provocative maneuvers. (Id.) He agreed there was slight mottling of the left knee more so than the right and said the skin felt slightly more cool to the touch than the contralateral side. (Id.) He did not note any differences in hair on her lower extremities between the right and left side. (Id.) She had no "terrible" sensitivity to light touch but did react to touch around her knee more than one would expect. (Id.) She did not have pain in her calf with squeeze and had normal capillary refill in her lower extremities. (Id.)

Dr. Farley took X-rays and reviewed medical records, including the August 17, 2023, MRI. (Id.) He diagnosed possible complex regional pain syndrome (CRPS) that he said was more likely

than not caused by the surgery and not by the work accident. (Id.) He acknowledged that a fall onto a knee or other sort of trauma can occasionally lead to a constellation of symptoms consistent with CRPS but noted that prior to surgery, the Petitioner had less pain and more mobility within her knee. (Id.)

Dr Farley said there was no indication for the arthroscopy, noting that she had the MRI demonstrated no abnormal findings that would benefit from a surgical intervention. (Id.) As to Dr. Bradley's finding that the Petitioner's symptoms were related to lateral patellofemoral plica, Dr. Farley stated that there is no such thing, but said there can be medial or lateral plica, which are bands of tissue present within the knee from birth. (Id.) He explained that plicae can be inflamed by an accident, but they are never caused by an accident. (Id.) He stated that lateral plica is extremely rare and attaches from the capsule of the knee laterally on one end towards the fat pad at its other end and, at no time, actually attaches to the patella itself. (Id.) He thought there was no indication to consider a full lateral release – a procedure performed significantly less with time as it is not an overly effective operative for lateral patellar facet compression syndrome, which he said was not present in this case. (Id.) He said the Petitioner seemed to have had a slight lateral tilt, which was not an abnormal finding. (Id.)

As to future treatment, Dr. Farley believed the Petitioner needed to be evaluated by an expert in CRPS or at least a well-trained pain medicine specialist. (Id.) He said the main inhibition to her moving her knee seemed to be pain, which may require a well-thought-out plan to manage her discomfort while allowing her to mobilize her knee and hopefully re-advance back into the work force. (Id.) He said that prescribed medications may include a supervised course of narcotics as well as other medications used to supplement narcotics in the setting of chronic pain. (Id.)

Dr. Farley found the Petitioner reached maximum medical improvement related to the work injury. (Id.) He let that, in the Petitioner's current state, she would have a difficult time doing anything more than sedentary work only. (Id.)

The Petitioner returned to Dr. Bradley on December 16, 2024, and her condition was unchanged. (PX5) Dr. Bradley stated that it was unclear why her pain was preventing her from moving her knee. (Id.) He referred her to pain management specialist Dr. Helen Blake at United Physicians Group. (Id.) He said there was nothing further he could offer from a surgical standpoint and placed the Petitioner at maximum medical improvement. (Id.) He kept her off work. (Id.)

Dr. Bradley testified consistently with his records at a deposition on December 20, 2024. (PX17) He opined that the sprained ankle the Petitioner suffered in November 2023 was causally related to the work accident because the pain in her knee caused her to stumble and fall with no other apparent cause for the fall. (Id.)

Dr. Bradley explained that a patellofemoral plica is a band of tissue that gets stuck between the kneecap and the knee. (Id.) He said that all the Petitioner's symptoms and the mechanism of injury matched that. (Id.) He said that following the injection performed on February 19, 2024, he had exhausted a significant amount of nonoperative treatment. (Id.) He said that the fact that the Petitioner had three or four hours of excellent pain relief from the injection was an indication that something "was going on inside her knee." (Id.) He said the logical next step would be a diagnostic arthroscopy, which he thought was medically necessary and appropriate at that point. (Id.) He said that during the surgery, he found a lateral patellofemoral plica that was getting pinched in the knee and a lateral tilt, where the patella wasn't gliding along the front of her knee, for which he performed the lateral release. (Id.)

As the Petitioner's condition worsened after surgery, Dr. Bradley suspected a nerve-related problem from her surgery, such as CRPS. (Id.) Dr. Bradley said he performed the manipulation to make sure that the Petitioner's inability to move her knee wasn't due to scar tissue. (Id.) He acknowledged that, retrospectively, the surgery made the Petitioner worse, for which he felt terrible. (Id.) He maintained that the surgery was the logical step in treatment. (Id.)

Regarding Dr. Farley's report, Dr. Bradley agreed with his diagnosis of possible complex CRPS, adding that Dr. Farley made broad statements but offered no explanations as to what he would have suggested or done. (Id.) Dr. Bradley said that in his reports, Dr. Farley "plays a little bit of a linguistics game." (Id.) Dr. Bradley agreed that the Petitioner's plica was pre-existing and said they did not bother her until the accident inflamed them. (Id.) He said that you can see a plica on an MRI, but an MRI misses findings of plica 20-30 percent of the time. (Id.)

Dr. Farley testified consistently with his report at a deposition on January 7, 2025. (RX3) He said he is not a believer in diagnostic arthroscopies, performing less than one a year. (Id.) He said it should be done in a "very, very rare case." (Id.) He said that based on the original work injury, he would say the Petitioner probably had a knee contusion for a period of time. (Id.)

Dr. Farley stated that it is usually a medial patellofemoral plica that can sometimes become inflamed and "kind of" catch in the patellofemoral joint. (Id.) He said he has not seen a symptomatic lateral plica in 20-plus years. (Id.) He said the Petitioner did not have an inflamed lateral or medial plica, as it was not demonstrated on the MRI nor described in the operative report. (Id.) Dr. Farley said the normal treatment for inflamed plica is to give it time, use anti-inflammatories, do therapy to build up the muscles around the knee, rest "a little bit" from work activities and undergo intra-articular injections. (Id.)

Regarding CRPS, Dr. Farley said the condition is very difficult to manage. (Id.) He said there are experts in the field that are better at getting people back to a level of productive living with a level of comfort – using modalities and medications. (Id.)

On cross-examination, Dr. Farley agreed that the conservative treatment Dr. Bradley prescribed, including the corticosteroid injection, was reasonable. (Id.) He acknowledged that the Petitioner continued to report painful symptoms through April 2024. (Id.) He added that if he had gotten an MRI eight weeks or so after the accident that was perfectly normal, he would have said there was nothing further to offer from a surgeon's standpoint. (Id.)

On January 29, 2025, the Petitioner saw Dr. Blake and reported difficulty with moving her leg with both flexion and extension, as well as tingling and weakness that made it difficult to use her leg. (PX14) Her pain ranged from 5-9/10. (Id.) She said the injections from Dr. Hagan provided only a few hours of relief before her pain returned. (Id.)

Upon examination, Dr. Blake noted a marked color difference between the right and left legs, with the left leg being more mottled and dusky in color, as well as trace swelling in the knee joint and significantly altered sensation with an area of maximal tenderness inferior and lateral to the kneecap. (Id.) She also had an area of altered sensation that extended up to her thigh, approximately three centimeters above the knee. (Id.) She had subjective temperature changes in the left leg in comparison to the right and significantly diminished range of motion. (Id.) Dr. Blake indicated that the Petitioner satisfied three out of four of the Budapest criteria used for diagnosing CRPS. (Id.) Dr. Blake diagnosed neuropathic pain of the left knee, and causalgia/CRPS type 1. (Id.) She felt that Petitioner primarily had a peripheral nerve problem and discussed treatment options of surgery with Dr. Hagan, stimulation, lumbar sympathetic blocks, and medication. (Id.)

Dr. Blake proceeded with diagnostic and therapeutic peripheral nerve blocks. (Id.) The Petitioner reported remarkable improvement of her pain, had some restoration in the range of motion in her knee, and her leg restored to a color matching her opposite leg. (Id.) Dr. Blake felt this was a successful block and was optimistic that she would be able to find a treatment plan forward to help restore function and as palliation for the chronic pain. (Id.) Dr. Blake felt the Petitioner would benefit from a lumbar sympathetic block and a consultation with a peripheral nerve specialist. (Id.) She discussed the Petitioner's care with Dr. Hagan. (Id.)

An addendum to Dr. Blake's note indicated that the day following the nerve blocks, the Petitioner reported to Dr. Blake's assistant that she had improvement for two to three hours, after which her pain gradually returned. (Id.) She said the color in her legs returned to the asymmetric condition as it had been prior to her injection. (Id.) On February 18, 2025, Dr. Blake performed a left lumbar sympathetic block. (PX15) The Petitioner testified that the injections last for about six hours, so she was hopeful they would help. (T. 18)

The Petitioner testified that she is still undergoing physical therapy twice a week. (T. 19) She said her knee still hurts and swells. (Id.) She uses crutches and is not able to bend her knee completely. (Id.) She said her right ankle is fine. (Id.) She said that her left knee has not gone back to the way it felt before the accident. (T. 20) She said she can't run, jump, play with her children, drive or dress herself. (T. 20-21) She said she was scheduled for follow-up visits with Dr. Blake for more injections. (T. 21) She said she wants to return to work. (Id.)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. Her testimony was consistent with her reports to the healthcare providers and Dr. Farley. There was no evidence of untruthfulness or malingering.

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

The Arbitrator address this issue in two parts – first, whether the Petitioner's condition, as diagnosed by Dr. Bradley at the time of surgery, was causally related to the accident, and second, whether her current condition is causally related to the accident.

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).

Dr. Farley said the Petitioner probably had a knee contusion from the work accident, but he did not believe she had an inflamed plica, based on not seeing it on the MRI or in the operative report. Dr. Bradley believed there was more to the Petitioner's injury, including a possibly inflamed plica, causing him to take what he called the next logical step of a diagnostic arthroscopy.

The circumstantial evidence supports Dr. Bradley's opinion that there was more to the Petitioner's injury than a contusion. After months of conservative treatment with little improvement, the Petitioner was still experiencing pain and limitations with range of motion and was unable to carry out her normal work duties.

Dr. Bradley's opinions deserve more weight because, as the Petitioner's treating physician, he had more opportunities to become familiar with the Petitioner and her condition over a long period of time. Related to this is the fact that Dr. Farley did not examine the Petitioner before her surgery, which lends less credence to his opinions regarding the Petitioner's condition at that time.

Lastly, during the surgery, Dr. Bradley saw a plica pinched inside the Petitioner's knee. This refutes Dr. Farley's opinion that the Petitioner did not have an issue with the plica. Dr. Farley conceded that an inflamed plica may not be visible on an MRI and that the inflammation could be caused by trauma. The Arbitrator does not make much of Dr. Farley's dispute over the nomenclature for the Petitioner's condition.

Therefore, the Arbitrator finds that the Petitioner's at the time of her surgery – specifically the pinched plica – was causally related to the work accident.

The second inquiry of whether the Petitioner's condition following the surgery is causally related to the work accident requires a determination of whether the surgery was reasonable and necessary. If it was not, there is a case for finding that the Petitioner's condition afterwards was not causally related to the accident.

Dr. Farley said that upon seeing a normal MRI, he would have stopped treating the Petitioner. He is not a believer in diagnostic arthroscopies. Dr. Bradley felt there was more he could do to relieve the Petitioner's symptoms and proceeded with the surgery.

The Arbitrator finds Dr. Bradley had a reasonable basis for proceeding with the surgery. Months of conservative treatment did not relieve the Petitioner's symptoms, and the results of the injection gave him cause to believe there was still a problem within the Petitioner's knee that could be addressed through arthroscopy.

As to the Petitioner's conditions of DVT and CRPS, the evidence points to them resulting from the surgery. The doctors agreed that the surgery made the Petitioner worse.

Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Vogel v. Indus. Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). Nothing in section 8(a) of the Workers' Compensation Act limits compensability to treatment which is successful. *Portec, Inc. v. Indus. Comm'n*, 95 Ill. 2d 303, 314, 447 N.E.2d 813, 69 Ill.Dec. 378 (1983). An employee is entitled to benefits where a second injury occurs due to treatment for the first. See e.g. *Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986).

As to the Petitioner's DVT, there was no evidence that this was caused by anything other than the surgery. Similarly, the Petitioner's CRPS also appears to have resulted from the surgery. Based on the law as stated above, the Arbitrator finds that the surgery did not break the causal connection between the accident and the Petitioner's DVT and CRPS conditions.

Regarding the Petitioner's right ankle injury, the medical records and the Petitioner's un rebutted testimony support that she fell and injured her ankle due to the ongoing condition in right knee. The Arbitrator finds that this injury flowed from her original injury and therefore, is causally related to the work accident.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and her left knee and right ankle 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).

Dr. Farley agreed that the conservative treatment rendered was reasonable and necessary. As noted above, the Arbitrator finds the surgery was reasonable and necessary. Based on the findings above regarding causation of the Petitioner's DVT, CRPS and ankle conditions, the Arbitrator finds treatment for those to be reasonable and necessary. Nothing in section 8(a) of the Workers' Compensation Act limits compensability to treatment which is successful. *Portec, Inc. v. Indus. Comm'n*, 95 Ill. 2d 303, 314, 447 N.E.2d 813, 69 Ill.Dec. 378 (1983).

The Petitioner has not paid for these services. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (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).

Regardless of his opinion about causation, Dr. Farley believed the Petitioner needed to be evaluated by an expert in CRPS or at least a well-trained pain medicine specialist. The Petitioner has sought out that treatment with Dr. Hagan and Dr. Blake. She continues to treat with Dr. Blake. The Arbitrator finds this prospective treatment to be reasonable and necessary to treat her CRPS.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Blake, and the Respondent shall provide 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.

Since the accident, the Petitioner was ordered off work or given light duty restrictions that were not accommodated by the Respondent. Based on the findings above, the Arbitrator finds the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 91 and 2/7 weeks, from July 24, 2023, through April 22, 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	23WC011382
Case Name	Brice Stanfield v. City of Bloomington
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0007
Number of Pages of Decision	30
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 1/15/2026

/s/Amylee Simonovich, Commissioner

Signature

23 WC 011382

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRICE STANFIELD,

Petitioner,

vs.

NO: 23 WC 011382

CITY OF BLOOMINGTON,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2025 is hereby affirmed and adopted.

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

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

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,

23 WC 011382

Page 2

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.

January 15, 2026

O: 01/13/26

AHS/ma

051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC011382
Case Name	Brice Stanfield v. City of Bloomington
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 7/22/2025

/s/Maureen Pulia, Arbitrator

Signature**INTEREST RATE WEEK OF JULY 22, 2025 4.12%**

STATE OF ILLINOIS)
)SS.
 COUNTY OF MCLEAN)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

BRICE STANFIELD,

Employee/Petitioner

v.

CITY OF BLOOMINGTON,

Employer/Respondent

Case # **23** WC **11382**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Bloomington**, on **6/26/25**. 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 **12/22/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

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

In the year preceding the injury, Petitioner earned **\$105,508.00**; the average weekly wage was **\$2,030.38**.

On the date of accident, Petitioner was **44** years of age, *single* with **1** dependent children.

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

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

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

Respondent is entitled to a credit of **\$50,668.97** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury to his cervical spine that arose out of and in the course of his employment by respondent on 12/22/20, and failed to prove by a preponderance of the credible evidence that his current condition of ill-being as it relates to his cervical spine is causally related to the alleged accident on 12/22/20. For these reasons Petitioner's claim for compensation is denied.

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

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



Signature of Arbitrator

JULY 22, 2025

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 44 year old Police Officer, alleges he sustained an accidental injury to his neck and legs that arose out of and in the course of his employment by respondent on 12/22/20.

Petitioner was employed as a police officer for the City of Bloomington from 2001 to 2020. Petitioner testified that his job title when he started was a patrol officer. Petitioner testified that in 2004 he went into the Streets Crimes Division and then went into Vice for two years. Petitioner further testified that he then returned to the Street Crimes Division, then went back to patrol around 2009 or 2010.

Petitioner testified that his duties as a patrol officer were to take calls for service, take reports, make traffic stops, and investigate property crimes. Petitioner testified that some of the things he was required to lift as a patrol officer included picking people up, sometimes during motor vehicle accidents. Petitioner testified that some of the things he had to push/pull as a patrol officer came up during resisting arrest cases. Petitioner testified that as a patrol officer he was required to climb when performing article searches, specifically in creeks, and that he was also required to climb over wooden and chain link fences. Petitioner further testified that he was required to make quick movements, bend, stoop, run, crawl, jump, and sit.

Petitioner testified that he was involved in two other work accidents prior to the accident on 12/22/20. Petitioner testified that on 2/2/12, he was on Veterans Parkway and a vehicle that was traveling southbound hit the back of his squad car and threw him into the squad car in front of him. Petitioner testified that he had neck pain after the event. Petitioner testified that he went to the ER, had an x-ray done, and was sent home with pain relievers. Petitioner testified that he believed the injury occurred on a Thursday, so he was told not to work the next day, which gave him a three-day weekend to recover before returning to work the next week.

Petitioner testified that between March of 2012 and October 2017 he did not receive medical treatment for his neck. Petitioner testified that he was able to work full duty as a patrol officer. Petitioner testified that on 10/15/17 he was involved in another accident at work. Petitioner testified that he was trying to perform a U-turn to pursue a vehicle that had run a red light when he struck another squad car that was unknowingly to the left of him. Petitioner testified that he did not injure his cervical area during the accident, did not receive any medical treatment, and continued to work unrestricted after the accident.

Petitioner testified that he did not have any ongoing care to his cervical neck leading up to November of 2020. Petitioner testified that he went to see Dr. Nardone on 12/21/20, a day before the incident that occurred on 12/22/20. Petitioner presented to Dr. Nardone complaining of an 8-9 month history of a burning feeling through

the upper and lower extremities, as well as some stiffness without any association to an injury. Petitioner reported that cold weather makes his symptoms worse. Dr. Nardone examined Petitioner and noted numbness, tingling, and a burning feeling throughout the body. Petitioner also reported stiffness. Dr. Nardone also found bilateral Hoffman's sign and bilateral C4-C6 bouts of clonus on exam. He also documented Petitioner having a spastic gait. Dr. Nardone concluded that Petitioner had signs and evidence, as well as an exam compatible with a cervical myelopathy.

Petitioner testified that on the morning of 12/22/20, he felt like he could do the duties required of him as a police officer. Petitioner testified that he went to work at 6:30-ish in the morning and attended the shift briefing at around 7:00 A.M. before making himself available for calls at around 7:20-7:30 am. Petitioner testified that he responded to a trespassing call at a Dollar General on East Oakland Avenue saying that they wanted to ban a man from the store. Petitioner testified that he located the suspect between Oakland and Bunn Street when he took off running and fell over on Bunn Street. Petitioner further testified that he and another officer then went after the suspect.

Petitioner testified that the suspect kept resisting and kept tugging/pulling, which eventually led to the suspect, Petitioner, and another responding officer going to the ground together. Petitioner testified that the suspect continued to resist while on the ground, so they ended up having to get leg shackles. Petitioner further testified that another officer showed up and helped hold down the suspect while he went to grab the shackles. Petitioner testified that he needed to use another officer to get up from a kneeling position. Petitioner testified that he had never experienced what he felt when he tried walking to his squad car.

Petitioner testified that before the event, stretching and exercise helped improve his symptoms. Petitioner then testified that after the event nothing made his symptoms any better. Petitioner testified that his legs were getting stiff and he was getting some bouncing in his right leg that he had never experienced before. Petitioner testified that when he was walking back to his squad car his legs felt stiff and rigid, which was different compared to how he felt on 12/21/20, a day before the accident. Petitioner testified that he felt scared and was thinking something was wrong. He was trying not to make it obvious that he was struggling. He was worried he might be called out by a supervisor who would pull him off the street.

Petitioner testified that he and the other officers escorted the suspect to a stretcher, and that he remembers using the suspect as a prop to get himself to the stretcher. Petitioner testified that he followed the ambulance to the hospital where he made a phone call to Dr. Nardone's office. Petitioner testified that he made the call to let

Dr. Nardone know what he had experienced and to also see if he could get in sooner than one week later. Petitioner testified that they were not able to get him in before his regularly schedule appointment already set for 12/28/20.

Petitioner acknowledged reviewing the videos of the incident. He testified that he did not know whether they showed his legs locking up. He also could not recall how long it took him to get the shackles from his vehicle and return to the suspect. Petitioner did acknowledge that when he returned to the scene, he was able to squat down and put the leg shackles on the suspect.

Petitioner testified that he did not talk to the paramedics at the scene about his symptoms, and did not ask anyone in the emergency room to check him out. He also did not write anything about the symptoms he experienced, or anything about what happened to him at the General Dollar call, in his incident report.

Petitioner completed his shift that day. He did not tell anyone at the scene that he hurt himself. Petitioner testified that he did not know he hurt himself because he never felt sharp pain in his neck. He stated that he had no idea what was happening. Petitioner testified that the rest of the day his symptoms were more significant than they had been.

Following the events of 12/22/20, incident reports were completed by Petitioner, Officer Loudenburg, and Officer Smallwood. Petitioner described the events involving the Dollar General call. He indicated the suspect was walking away from him and Officer Loudenburg, and they each grabbed the suspect's arm. Petitioner wrote the suspect was pulling his arms toward the front of his body. Petitioner and Officer Loudenburg secured the suspect in handcuffs. They slowly assisted the suspect to the ground. He further wrote the suspect continued to push, pull, and kick. Petitioner wrote in his report that he secured the suspects legs with restraints. They called for rescue to transport the suspect to the hospital because of an injury to the suspect's hand. Petitioner went to the hospital. He noted the suspect went to sleep. The nurse woke up the suspect, and Petitioner removed the handcuffs so treatment could be provided to the suspect's hand. The incident report does not mention Petitioner's alleged symptoms or any difficulty he had standing or walking.

Officer Smallwood also completed an incident report. His only description of the scene of the alleged work accident was that he provided a copy of some paperwork to the Bloomington Fire Department Rescue Personnel. He did not comment on Petitioner's reported difficulties or his observations of any struggle with the suspect.

Officer Loudenburg also completed an incident report. He wrote that he and Petitioner grabbed the suspect's left arm when the suspect was trying to walk away. Petitioner handcuffed the suspect behind his back while the suspect was trying to pull away. The two officers assisted the suspect into a seated position on the curb. Officer Loudenburg wrote the suspect wiggled around and started kicking his legs. Petitioner held the suspect still on his upper body while Officer Loudenburg held the suspect's legs. The report indicates Petitioner placed shackles on the suspect's legs. Rescue was summoned and transported the suspect to the hospital.

Petitioner testified that the last day he worked was December 26th, 2020.

Petitioner testified that he when saw Dr. Nardone on 12/28/20 he told him about his increased symptoms without mentioning the work accident. Petitioner testified that he did not know any event at work that had anything to do with his condition. He stated that he was still concerned about having cancer or ALS. Dr. Nardone examined Petitioner and noted that his overall situation was unchanged. An MRI performed that day revealed an elevated signal within the spinal cord at C5-C6 with degenerative changes resulting in severe bilateral neural foraminal stenosis and moderate to severe central canal stenosis. Following his examination, and review of the MRI, Dr. Nardone ordered a fusion of the neck, which Dr. Nardone performed on 12/31/20.

Petitioner followed up with Dr. Nardone on 1/11/21. Petitioner reported that he was having trouble with tingling/burning/numbness to body, worse on the right leg. He testified that he was still experiencing intense symptoms including bouncing and shaking of his legs. Dr. Nardone examined Petitioner and ordered a course of physical therapy. He released Petitioner to part time work.

Petitioner was off work until 1/30/21. Petitioner then began working light duty.

Petitioner underwent 18 sessions of physical therapy at OSF St. Joseph's. Petitioner testified that during his physical therapy that he had quite a bit of spasticity in his legs, and was told he was probably always going to have that spasticity because there was damage to his spinal cord.

On 3/29/21, Petitioner followed up with Dr. Nardone. He reported that he was having trouble with tingling/burning/numbness to body, worse on the right leg. Dr. Nardone examined Petitioner and assessed no hypertension. Dr. Nardone ordered another MRI of the cervical spine that showed a satisfactory anterior decompression and fusion at C5-C6, and possible cord gliosis. The report also noted a mild progression of a disc herniation at C6-C7 resulting in a moderate degree of central stenosis. Dr. Nardone referred Petitioner to Dr. Carmichael for a Functional Capacity Evaluation (FCE).

Petitioner testified that leading up to April of 2021, he wanted to go back to work as a police officer.

On 4/5/21 Petitioner returned to Dr. Nardone. Petitioner's condition was essentially unchanged. Dr. Nardone examined him and told him to return if his condition worsened. He referred Petitioner to Dr. Pegg, a neurologist, to evaluate for possible demyelinating disease.

The FCE for Petitioner, conducted 4/9/21, assessed his physical abilities and limitations following a cervical disc disorder at the C5-C6 level with myelopathy. The evaluation revealed that Petitioner was functioning in the lower range of the Heavy Physical Demand Level (PDL), capable of occasional lifting up to 55 lbs. from waist to floor, 30 lbs. from waist to crown, and carrying 55 lbs. However, he demonstrated limitations in activities such as walking, crouching, kneeling, elevated work, stair climbing, ladder climbing, and job simulation tasks like altercation simulation, dummy drag, and running. These limitations raised concerns about his ability to safely perform the physically demanding tasks required of a police officer, such as restraining individuals, dragging them to safety, or running during emergencies.

During the evaluation, Petitioner displayed purposeful movements but was slightly slowed, guarded, and uncoordinated, particularly during high-demand activities. He reported no pain throughout the testing, with a pain scale of 0/10, but noted fatigue during certain tasks, such as the dummy drag. His gait was guarded and uncoordinated, with slight antalgia and decreased arm swing. While his static push and pull efforts were strong, and his grip strength was within normal limits, he exhibited clonus and tonal issues during more demanding activities. Despite these challenges, he maintained balance during all trials and demonstrated a good range of motion and strength in his upper and lower extremities, except for the decreased hip range of motion.

The therapist concluded that Petitioner's physical abilities did not match the requirements of his regular patrol duties as a police officer. It was noted that while Petitioner was currently functioning in the lower range of the Heavy PDL, his limitations in high-level physical activities posed safety risks to himself, his colleagues, and the public. The therapist recommended job modifications or alternative placement within his profession that do not require higher-level physical activities. Petitioner expressed the goal of completing five more years of work with the police department before retirement, but deferred to the therapist's judgment regarding his ability to return to full-duty patrol work.

After the first FCE Petitioner sought a 2nd opinion at the Mayo Clinic. Petitioner testified that he started treating at Mayo in May of 2021. Dr. John Atkinson, a neurosurgeon, documented a history from Petitioner that he began noticing symptoms in the summer of 2019 suggesting spinal cord mechanisms taking place at that time. Petitioner noted that his symptoms worsened and imaging revealed a degenerative disc at C5-C6 with cord signal change in the setting of a congenitally narrow canal.

Petitioner also saw Dr. Jane Konidis while at Mayo Clinic. Dr. Konidis is a physical and rehabilitation physician. Petitioner reported left hand tingling and spasticity in the lower extremities, more than the upper extremities. He reported that in the summer of 2019, he experienced shakiness, but did not experience neck pain, or extremity pain. On examination, with cervical extension, Petitioner experienced burning into his thorax down into his abdomen. Petitioner told Dr. Konidis that when his symptoms worsened in December of 2020 he consulted a neurosurgeon. Petitioner reported that in December of 2020 he was on a police call and when he got up from apprehending a subject, he could hardly walk back to his car. He did not tell Dr. Konidis that he saw the neurosurgeon the day before this incident.

Petitioner asked Dr. Konidis if she thought there was a causal relationship between his cervical myelopathy and his 2012 motor vehicle accident. Dr. Konidis stated that she was unable to render an opinion as to whether there was a causal relationship between the 2012 motor vehicle accident he described and his cervical myelopathy because he was from out of state.

Petitioner also saw Dr. Neal Boeder, a general internal medicine doctor, while at Mayo Clinic. Petitioner's chief complaint was cervical myelopathy. The only traumatic incident Petitioner reported was the motor vehicle accident in 2012 while working for respondent.

Petitioner also saw Dr. Michael Wainberg at Mayo. He complained of spasticity secondary to cervical myelopathy. Dr. Wainberg recommended that Petitioner continue his stretching and activity program and also keep taking baclofen. When Petitioner saw Dr. Wainberg again in December of 2021 Dr. Wainberg noted that Petitioner had made some gains with regards to mobility and function but still had some limitations related to spasticity and contracture. He recommended that Petitioner continue a stretching program, and to touch base with physical therapy.

Petitioner continued working light duty. He further testified that he continued to treat with Mayo Clinic off and on through December 2021.

Petitioner testified that Dr. Nardone gave him a letter releasing him back to work based on the FCE. Petitioner testified that once he returned to work some of the chiefs pulled him into an office for a chat. Petitioner testified that they told him the City wanted him to perform another FCE and that he could take his uniform off and return home.

On 9/27/21 Petitioner returned to Dr. Nardone. Dr. Nardone noted that petitioner had improved, but still had some weakness and spasms in the legs related to residual myelopathic findings.

Petitioner applied for a non-duty disability pension on 11/15/21. Petitioner filled out the application in his own handwriting. Question 11 on the first page of the application asks for the date of sickness, accident, injury or illness (referred to as the “event”). Petitioner wrote, “unknown event diagnosed 12/21/20.” Question 13 asks for the location of the event, and Petitioner wrote “unknown.” Question 14 asks for contact information for all persons who witnessed the event. Petitioner wrote, “unknown what caused injury.”

Question 15 asks the applicant to describe in detail how the sickness, accident, injury or illness was caused. Petitioner wrote, “unknown. Legs became weak and wobbly. Left hand became numb. Periods of difficulty walking or lifting feet led me to seek medical attention. MRI confirmed condition of cervical stenosis with myelopathy.” Petitioner also noted on the application he submitted his medical bills to Blue Cross Blue Shield of Illinois.

As part of the pension board process, Petitioner testified that he was set up with three medical examinations, one of which was with Dr. Fletcher on 7/8/22. Petitioner presented with a history of cervical spine issues stemming from a 2012 work-related motor vehicle collision and a subsequent accident in 2017. There was diagnostic testing of the cervical spine that showed pathology at C5-C6. Dr. Fletcher also noted Petitioner had bilateral leg weakness and unsteadiness in 2016. Dr. Fletcher documented a history of Petitioner being unable to stand from a chair in a briefing room in November of 2020. He noted that in late 2020, Petitioner was diagnosed with cervical myelopathy, confirmed by MRI imaging, which led to emergency cervical disc surgery on December 31, 2020. Despite treatment, including physical therapy, injections, and medications, Petitioner noted that he continues to experience significant symptoms, including bilateral leg stiffness, spasticity, and left-hand locking. He noted that these symptoms are exacerbated by cold weather, anxiety, and excitability, and they impair his ability to navigate stairs, perform fast-twitch exercises, and respond effectively in emergency situations.

Dr. Fletcher’s examination revealed objective findings consistent with cervical myelopathy, including proximal leg muscle weakness, spasticity, hyperreflexia, and an abnormal gait. Diagnostic studies confirmed degenerative changes at the C5-C6 level and cervical spondylosis with myelopathy. Functional assessments, including a Pain Disability Questionnaire and Functional Capacity Evaluation, indicate that Petitioner is unable to perform unrestricted police duties, particularly tasks requiring rapid physical responses. While he can perform basic activities of daily living, his condition poses a high risk of falling and prevents him from safely executing the essential functions of his role as a police officer. Dr. Fletcher’s medical chronology only included the 12/31/20 operative report by Dr. Nardone.

Dr. Fletcher concluded that Petitioner's condition is permanent and stationary, with no reasonable expectation of improvement through further medical treatment. His residual neurological deficits are fixed, and he is unable to recover sufficiently to return to full and unrestricted police duties. Based on the medical evidence, functional limitations, and prognosis, Petitioner is permanently disabled from performing the essential duties of his position, particularly those requiring emergency response capabilities. This report provides substantial evidence supporting his disability application.

Petitioner testified that when he saw Dr. Fletcher he had not changed his mind as far as what was causing his problems, but did discuss potential causes with Dr. Fletcher. Petitioner testified that Dr. Fletcher wondered why he was doing a non-duty disability. Petitioner testified that Dr. Fletcher felt like there was some correlation between the incident at work and his neck. Petitioner testified that it was the first time he had become aware that there may be an association between the work accident and his condition. Petitioner further testified that Dr. Fletcher gave him the names of a few different attorneys that handled cases for police officers and first responders. Petitioner then contacted Stephen Kelly.

Dr. George S. Miz conducted an examination of Petitioner on 8/4/22, in relation to his application for a non-duty disability pension due to cervical stenosis and residual myelopathy. Petitioner documented a history of a motor vehicle accident on 2012 followed by cervical discomfort and diagnosis of disc space narrowing at C5-C6. He also documented difficulty running in 2016; lower extremity weakness while waterskiing in 2018; hard time picking up his legs especially when running in 2019; and generalized weakness in his lower extremities, as well as stiffness in his legs and difficulty navigating stairs. He also provided a history of an episode when he could not stand from a chair in the briefing room. Petitioner reported a history of progressive symptoms beginning in 2016.

Petitioner reported that in December 2020, he experienced extreme stiffness in his legs during an arrest, leading to a diagnosis of cervical stenosis with myelopathy and subsequent decompressive surgery at C5-C6. Despite rehabilitation, he continues to experience significant limitations, including spastic gait, difficulty navigating stairs, involuntary leg movements, and an inability to transition from standing to running. He also has numbness and occasional locking in his left hand, though he reports no difficulty handling a weapon.

Dr. Miz reviewed extensive medical records, including physical therapy notes, hospital records, and evaluations from Mayo Clinic and Athletico. These records confirmed residual myelopathy and functional impairments, such as clonus, hyperreflexia, and balance issues. The Functional Capacity Evaluation noted that while Petitioner meets most job demands, his inability to accelerate into a run poses a safety concern.

On physical examination, Dr. Miz observed spastic gait, clonus during push-off attempts, and hyperreflexia in the lower extremities. Diagnostic impressions indicated residual spinal cord dysfunction and myelopathy, with no dermatomal sensory deficits but persistent proprioceptive and motor impairments.

Based on his evaluation, Dr. Miz opined that Petitioner is disabled from performing full and unrestricted police duties due to his inability to run effectively, which compromises his safety and the safety of others. He further opined that no additional medical treatments are likely to enable Petitioner to recover sufficiently to return to unrestricted police work. Dr. Miz's findings support the claim that Petitioner's disability is permanent and significantly impacts his ability to fulfill the essential duties of a patrol officer.

On 1/9/23, Dr. George S. Miz provided a supplemental report regarding Petitioner's disability application. He reviewed various medical and incident reports, including fitness-for-duty evaluations, crash reports, and body cam footage. Dr. Miz concluded that Petitioner suffers from cervical myelopathy at C5-C6, which causes significant physical limitations, including difficulty running. This condition, in Dr. Miz's opinion, renders Petitioner permanently disabled from performing full and unrestricted police duties due to safety concerns for both him and others.

Dr. Miz determined that Petitioner's disability is primarily related to a pre-existing condition of cervical spinal stenosis with progressive myelopathy. While the incidents of 2/2/12, and 10/15/17, were deemed unrelated to his disability, the 12/22/20, altercation with a suspect aggravated his fragile spinal condition, contributing to the progression of his disability. He was of the opinion that the records of the actions of the restraining of the suspect on 12/22/20 were sufficient to aggravate the condition of his progressive cervical myelopathy. Dr. Miz found Petitioner's explanation of how the disability occurred consistent with his medical findings. Dr. Miz noted described the videos of the altercation on 12/22/20 as showing pushing and pulling, but no violent movements.

Regarding future work capacity, Dr. Miz opined that Petitioner could perform limited or light-duty roles if such positions were available. However, he stated that no additional medical treatments could reasonably be expected to enable Petitioner to recover from his disability and return to full and unrestricted police duties.

Petitioner amended the application for non-duty disability benefits to line of duty disability benefits on 8/15/22.

On 1/23/23, Petitioner underwent another examination performed by Dr. Fletcher. At the time of this exam, Petitioner was not experiencing any pain. Dr. Fletcher diagnosed Petitioner with cervical myelopathy secondary to cervical stenosis, which permanently impairs his ability to perform unrestricted police duties,

particularly in emergency situations. He noted that the condition also causes muscle weakness in Petitioner's legs and features of left ulnar nerve issues. Dr. Fletcher concluded that Petitioner's disability is permanent and irreversible, with no medical treatment capable of restoring his ability to return to full police duties.

Dr. Fletcher issued a report that outlined three work-related incidents that contributed to Petitioner's disability. He noted that in February 2012, Petitioner was involved in a motor vehicle collision that caused cervical pain and revealed pathology at the C5-C6 level. Although his condition improved, lingering issues persisted. In October 2017, another motor vehicle collision aggravated Petitioner's pre-existing cervical condition, leading to persistent neck pain. Dr. Fletcher documented a history of Petitioner being unable to stand from a chair in the briefing room November of 2020. He further documented that the police department had Petitioner leave work, and had an officer drive him home. It was noted that Petitioner's legs improved, and he was fine later that same day. Finally, in December 2020, while arresting a combative suspect, Petitioner experienced an immediate onset of bilateral leg weakness and difficulty standing. Dr. Fletcher commented that Petitioner's gait was unsteady in the video. He concluded that the events of 12/22/20 were the straw that broke the camel's back and made Petitioner's cervical stenosis symptomatic, causing proximal weakness. An MRI confirmed a spinal cord injury at C5-C6. Petitioner underwent surgery shortly thereafter. Dr. Fletcher concluded that these incidents aggravated Petitioner's pre-existing cervical degenerative disease, with the December 2020 incident being the final trigger that made his underlying cervical stenosis symptomatic.

Despite his disability, Petitioner can perform limited or light-duty work and is currently employed as an evidence technician for Respondent. However, Dr. Fletcher emphasized that Petitioner's residual neurological deficit is fixed and will not sustainably improve. Based on the medical evidence, Dr. Fletcher supports the conclusion that Petitioner's disability is permanent, stems from a combination of pre-existing conditions and work-related incidents and prevents him from performing unrestricted police duties. This evaluation strongly supports Petitioner's application for a line-of-duty disability pension.

Petitioner testified that he was given the job of evidence technician after the City of Bloomington advised him that he was no longer employable as a police officer. Petitioner was working in this capacity on the date of trial. Petitioner testified that he can't really jump anymore and his legs are more unsteady than they were.

On 5/2/23 Petitioner filed his Application for Adjustment of Claim with respect to this injury. Petitioner alleged an accident date of 12/22/20. He identified how the accident occurred as "detaining suspect, while working." He identified the part of the body affected as "Man as a Whole." He identified the nature of the injury as "serious."

On 11/3/23 the evidence deposition of Dr. Fletcher was taken on behalf of Petitioner. Dr. Fletcher testified that he is a board-certified occupational specialist, who examined Petitioner after being asked by the pension board. Dr. Fletcher testified that Petitioner did not make a request for a line of duty pension request in July of 2022. Dr. Fletcher testified that his role as the examining doctor for the pension board was to figure out whether the individual is disabled and whether he could undergo any additional medical treatment that would be able to restore him back to full unrestricted duty as a police officer.

Dr. Fletcher testified that he was asked by the pension board to perform a second examination on Petitioner. Dr. Fletcher testified that the pension board asked him to determine causation. Dr. Fletcher testified that he found Petitioner credible throughout the process. Dr. Fletcher testified that he obtained a history from Petitioner.

Dr. Fletcher testified that Petitioner's first physical examination was abnormal in that he had obvious residual neurological deficits. Dr. Fletcher stated that Petitioner had an abnormal gait and a very profound gait disturbance. Dr. Fletcher further testified that Petitioner had an extreme amount of proximal leg weakness in the thighs and hyperreflexia. Petitioner also had brisk reflexes, especially at the knees, and a positive Babinski sign suggesting an upper neuron dysfunction.

Dr. Fletcher testified that Petitioner had undergone a decompression surgery of C5-C6, anterior cervical fusion in December of 2020. Dr. Fletcher testified that cervical myelopathy is a condition that develops gradually over time, and that a traumatic event can make it very symptomatic.

Dr. Fletcher testified that his opinion was that Petitioner would never be able to go back to work as a police officer. Dr. Fletcher testified that there was not any medical treatment modality that Petitioner could have undergone to get him back to work full duty.

Dr. Fletcher testified that he knew Petitioner was in two vehicular accidents prior to the third event that occurred on 12/22/20. Dr. Fletcher testified that Petitioner told him about the third event during the first examination, but that the focus of the first examination was not to determine causation.

When discussing the events of 12/22/20, Dr. Fletcher testified that Petitioner apprehended a suspect, had a tussle, and immediately had symptoms after he fell to the ground. He further testified that the video showed Petitioner's gait became disturbed. Dr. Fletcher stated that he could start seeing the proximal leg weakness indicating that Petitioner was manifesting symptomatology related to cervical myelopathy.

Dr. Fletcher further testified that he believed Petitioner's work duties contributed to the development of his condition and was involved in his present condition. He acknowledged that Petitioner had preexisting

degenerative changes at C5-C6. He further testified that the altercation at work caused Petitioner to have an extreme amount of symptoms, causing Petitioner to seek medical treatment.

Dr. Fletcher testified that Petitioner suffered a permanent aggravation of a preexisting condition. Dr. Fletcher testified that the treatment Petitioner received after the accident was reasonable, necessary, and was related to the work event described on 12/22/20. Dr. Fletcher further testified that Petitioner's restrictions and loss of occupation are related to the described work accident that occurred on 12/22/20.

Dr. Fletcher testified that Petitioner stated that he needed help getting back to his squad car during the work accident on 12/22/20. Dr. Fletcher testified that the mechanism of injury was Petitioner's spine getting jostled during the altercation. Dr. Fletcher further testified that he suggested Petitioner consult a lawyer if he had any questions.

Dr. Fletcher acknowledged that Petitioner's testimony during the pension hearing indicated that he never told him that he needed assistance walking back to his car, and having no recollection of being unable to stand from a chair in a briefing room and having another officer drive him home, were inconsistent with the history he documented. Dr. Fletcher testified that Petitioner's histories he documented were consistent with the natural history of cervical myelopathy from cervical stenosis.

Dr. Fletcher testified that he agreed the symptoms documented by Dr. Nardone on 12/21/20 were consistent with cervical myelopathy. The symptoms and clinical findings included burning throughout the upper extremities and lower extremities for a period of 8-9 months; a bilateral Hoffman's sign; clonus; and a spastic gait. Dr. Fletcher also agreed with Dr. Nardone's diagnosis of cervical myelopathy on 12/21/20, and with his order for an MRI of the cervical spine. Dr. Fletcher also agreed that there were no documented changes in Petitioner's condition between 12/21/20 and 12/28/20. Dr. Fletcher testified that Petitioner did not report any pain or self-reported disability when he first saw him in July of 2022.

On 2/26/24 Petitioner last followed up with Dr. Nardone. Petitioner reported that he had been developing pain in the right side of his neck into the shoulder, which was worse after doing computer work. Dr. Nardone examined Petitioner and noted improving symptoms. Since Petitioner's symptoms were improving, Dr. Nardone administered no treatment at that time. He also recommended that Petitioner get off of the muscle relaxers.

On 6/26/24 Petitioner underwent a Section 12 examination performed by Dr. Harel Deutsch, a neurosurgeon, specializing in spine surgery, at the request of the Respondent. Petitioner provided Dr. Deutsch with a history of three accidents. Based on his evaluation of Petitioner and review of Petitioner's medical

records, pension board IME doctor reports, Petitioner's application for a non-duty pension and the videos of the events in question, Dr. Deutsch rendered an opinion there is no causal connection between Petitioner's job duties 12/22/20 and Petitioner's current condition. He based his opinion on Petitioner seeing Dr. Nardone the day before the work activities and having the same complaints as after the work activities. Additionally, Petitioner did not report any injury or tell Dr. Nardone anything about his work activities. Furthermore, Dr. Nardone indicated in his note dated 12/28/2020 that Petitioner's overall situation was unchanged. Also noted was the fact Petitioner told the doctors at Mayo Clinic that he only recalled a trauma from 2012, and he told Dr. Konidis that he had symptoms in 2019 including leg weakness.

The evidence deposition of Dr. Miz was taken on 12/3/24. Dr. Miz testified that he is a board-certified orthopedic surgeon. Dr. Miz testified that he limits his practice to the treatment of spinal disorders. Dr. Miz testified that he was asked to be involved in the case of Petitioner by the Bloomington Police pension board. Dr. Miz testified that he performed a physical examination on Petitioner on 1/9/23. Dr. Miz testified that he believed Petitioner was disabled from performing full and unrestricted police duties specifically related to his residual findings of spinal cord dysfunction and myelopathy. Dr. Miz further testified that there was not any treatment Petitioner could've received that may have improved his condition so that he could return to police work.

Dr. Miz testified that he believed Petitioner's condition was permanent. Dr. Miz further testified that he believed Petitioner suffered from a preexisting condition of cervical spinal stenosis with progressive myelopathy. Dr. Miz testified that the accident that occurred on 12/22/20 contributed to Petitioner's disability, and that as of 11/15/21 Petitioner was not relating or attributing his cervical condition to the incident at work in 12/22/20.

On cross examination, Dr. Miz testified that he would think that if Petitioner thought he was injured as a result of an incident at work, he would have included it in the 11/15/21 application for disability pension. Dr. Miz agreed that Petitioner's cervical myelopathy condition dated back to at least 2016 and that it was a progressive condition. He also confirmed that the incident described by Petitioner from before December 2020, when he could not stand, was consistent with cervical myelopathy. Despite Petitioner's claim that he suffered from increased weakness in his legs on 12/22/20, Dr. Miz testified that he saw nothing in the videos that he could point to and say that was the spot when something happened. He further testified that Petitioner seemed to be able to walk around on the videos, and he could not observe any symptoms from watching the videos. Dr. Miz agreed that if Petitioner saw Dr. Nardone, a neurosurgeon, one day before the activities in question, and gave a history of right leg numbness and tingling and burning throughout the body for the previous 8-9 months,

that would be consistent with cervical myelopathy. Dr. Miz also testified that complaints of stiffness would be also be consistent with cervical myelopathy. Dr. Miz agreed that a bilateral Hoffman's sign, bilateral 5-6 bouts of clonus, and a spastic gait were all consistent with cervical myelopathy.

Dr. Miz testified that he had no reason to dispute Dr. Nardone's finding that Petitioner's overall situation was unchanged after the work activities. He was of the opinion that Dr. Nardone's surgery was to address Petitioner's progressive cervical myelopathy, and that Petitioner was a candidate for the surgery the day before his work incident on 12/22/20. Dr. Miz could not opine that Petitioner's work incident on 12/22/20 contributed to his need for surgery. He explained that unless there was an increased degree of objective weakness or deficits, then no connection can be made. Dr. Miz testified that unless Dr. Nardone made these findings 6 days after the work activities, there were no objective changes.

On 2/5/25 the evidence deposition of Dr. Deutsch was taken on behalf of Respondent. Dr. Deutsch testified that his physical examination of Petitioner was normal. Dr. Deutsch testified that Petitioner was rear-ended in a motor vehicle accident in February of 2012 and was diagnosed with a cervical strain. Dr. Deutsch testified that it would be speculative to say that the accident in February of 2012 had anything to do with Petitioner's current condition. Dr. Deutsch testified that Dr. Nardone found Petitioner to have a spastic gait, which is one of the main signs of cervical myelopathy.

Dr. Deutsch testified that when he was reviewing the video of the accident from 12/22/20, he thought Petitioner was functioning normally and didn't have any physical activity that would be consistent with a possible injury. Dr. Deutsch testified he did not see Petitioner fall or struggle or have any physical activity consistent with a possible injury. Dr. Deutsch indicated that unless someone hit Petitioner in the head or Petitioner's neck snapped back, simply holding down a suspect would not cause or aggravate cervical myelopathy.

Dr. Deutsch also testified that based on Dr. Nardone's note from 12/21/20, Petitioner was a surgical candidate the day before the alleged work accident because of the spinal cord compression. With respect to Petitioner's current condition, Dr. Deutsch testified his limitations were not related to the activities of 12/22/2020.

Dr. Deutsch testified that he reviewed Dr. Nardone's note from 12/28/2020 and that it stated Petitioner's condition was unchanged and there was no mention of any work accident. Dr. Deutsch testified that Dr. Nardone's diagnosis of cervical myelopathy was the correct diagnosis and the surgery he performed was appropriate and necessary for the diagnosis.

Dr. Deutsch testified that cervical myelopathy can be aggravated by certain physical activities and that Petitioner's diagnosis can be aggravated by activity which could increase his symptoms. Dr. Deutsch testified that he cannot say that Petitioner's work accident aggravated his condition because there is no documentation for a work injury or any new complaints.

Dr. Deutsch testified that if one is in a car accident or has a significant fall, they could be paralyzed if they have cervical myelopathy. Dr. Deutsch further testified that getting hit in the head could aggravate Petitioner's diagnosis. Dr. Deutsch testified that Petitioner was a surgical candidate for cervical myelopathy as of 12/22/20. Dr. Deutsch testified that some clients are surprised when he tells them that their leg problems are related to their neck. Dr. Deutsch further testified that he believes Petitioner is intelligent and self-aware enough to know his symptoms and tell the doctor about his symptoms.

Based on his evaluation of Petitioner and review of Petitioner's medical records, the pension board IME doctor reports, Petitioner's application for a non-duty disability pension, and the videos of the events in question, Dr. Deutsch rendered an opinion that there is no causal connection between Petitioner's job duties on 12/22/20 and Petitioner's current condition. He based his opinion on Petitioner seeing Dr. Nardone the day before the work activities and having the same complaints as after the work activities. Additionally, Petitioner did not report any injury or tell Dr. Nardone anything about his work activities. Furthermore, Dr. Nardone indicated in his note dated 12/28/2020 that Petitioner's overall situation was unchanged. Furthermore, Petitioner told the doctors at Mayo Clinic that he only recalled a trauma from 2012, and he told Dr. Konidis that he had symptoms in 2019 including leg weakness.

On cross exam, Dr. Deutsch confirmed that pushing and pulling and exertion with the arms extended would not aggravate cervical myelopathy.

Petitioner testified that he currently works as an evidence technician. He testified that his legs still get stiff and rigid, his legs involuntarily bounce, and he has spasticity in his ankles. He also testified that he is not able to run or sprint, but can jog. Petitioner is unable to jump, and his legs feel more unsteady than before.

Petitioner acknowledged that the cervical spine level of C5-C6 that Dr. Nardone performed surgery at on 12/31/20, is the same level where degenerative changes were seen on an x-ray following his 2012 accident.

Petitioner agreed that he began noticing weakness in his legs in 2016, with a worsening burning and tingling feelings at the beginning of 2020. Petitioner testified that he saw Dr. Nardone because the burning, tingling and leg symptoms were getting worse.

Brent Smallwood testified that he was employed by the Bloomington Police Department in December of 2020. Smallwood testified that he was a patrol officer and had been working for 21 years. Smallwood worked many of those years as a patrol officer, but also spent four years in the US Marshall's Violent Fugitive Task Force. Smallwood is currently retired and receiving a line of duty disability. Smallwood testified that he also has his own Workers' Compensation case pending against the City of Bloomington. Smallwood further testified that the fact he has a case pending would not affect the way he was going to testify in this case.

Smallwood testified that Petitioner was his co-worker on dayshift. Smallwood also testified that he didn't notice anything unusual about Petitioner during the morning briefing. Smallwood testified that he saw Petitioner again around 9:00 A.M. that morning. Smallwood testified that he went to the Dollar General to take a report of the individual that was causing a disturbance. Smallwood testified that he saw Petitioner as he arrived at the scene. Smallwood testified that Petitioner caught his attention because he looked at him with a panicked look on his face. Smallwood testified that he asked Petitioner what was going on, but Petitioner kept walking. Smallwood testified that it looked like Petitioner was having trouble walking and that his legs were not working right. Smallwood further testified that Petitioner was a good, hard-working police officer.

On cross-examination Smallwood testified that Petitioner did not look right during the entire time he was at the scene. Smallwood did not include anything about Petitioner or his condition when he drafted his incident report. Smallwood could not recall if he saw Petitioner the following day, but he worked with Petitioner for days and weeks after that time, and did not think Petitioner was ever better. Smallwood denied noticing any differences with Petitioner's gait before 12/22/20 but did notice that in days after 12/22/20. He testified that Petitioner didn't seem to be able to carry himself the same way.

Respondent offered into evidence several body cam and dash cam videos of the Dollar General call on 12/22/20 that Petitioner responded to. (RX6) The video labeled "Dollar Tree arrest 2" provides the most thorough depiction of the events 12/22/20. The video shows Petitioner holding down the suspect and then standing up to get restraints. The video does not depict Petitioner having any difficulty standing up. Similarly, when Petitioner returned a short time later with the restraints, he did not appear to have any difficulty squatting down and placing the restraints on the suspect's legs.

The videos from the hospital do not depict Petitioner having any difficulty standing or walking.

**C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?
F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?**

The burden is upon the claimant to prove by a preponderance of credible evidence the essential elements of his claim. *Seiber v. Industrial Commission* (1980) 82 Ill 2d 87. A claimant bears the burden of proof to establish the elements of his right to workers' compensation. In order for accidental injuries to be compensable, a claimant must show such injuries arose out of and in the course of his employment. For an injury to arise out of one's employment, it must have an origin in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the injury. *Navistar Int'l Transportation Corp. v. Industrial Commission*, 315 Ill.App.3d 1197 (1st Dist. 2000)

In the case at bar, Petitioner claims he sustained an accidental injury to his cervical spine that arose out of and in the course of his employment with respondent on 12/22/20. On this date, Petitioner alleges he sustained an aggravation of a preexisting cervical condition. On 12/22/20 Petitioner assisted a fellow officer with an arrest.

Petitioner testified that the suspect was located between Oakland and Bunn Street, and that he took off running and fell over. Petitioner testified that he and another officer went after the suspect. He testified that the suspect kept resisting and tugging and pulling, which eventually led to all three of them going to the ground together. The arbitrator does not find this testimony persuasive given that none of the officers' bodycams show, or incident reports include, this tussle and takedown of the suspect, and the fact that Petitioner's report states "They slowly assisted the suspect to the ground," and Officer Louderburg's report states "The two officers assisted the suspect into a seated position on the curb." The arbitrator notes the videos only show the officers holding the suspect down on ground, while he was wiggling about.

There is also some video of Petitioner kneeling next to the handcuffed suspect, holding the suspect down by placing his arm through the suspect's handcuffed arms, while Officer Louderburg is seen attempting to restrain the suspect's legs/feet. At one point, it is decided that leg shackles are needed. Petitioner decides to go get them from his car. All that is seen on the videos is Petitioner pushing up from his kneeling position by using his hands to push up off the suspect. There are no videos of Petitioner getting up to a full standing position. All that is seen is his hand pushing off the suspect and his knees rising and exiting the view of the camera. There is nothing on the videos that show Petitioner using a fellow officer's shoulder to brace himself while getting up, or shaking his right leg after he got up to stand. When Petitioner returns with the shackles he is able to get back down on his knees and apply them without incident.

Petitioner testified that when he was walking back to the squad car to get the leg shackles his legs were getting stiff and rigid, which was different when compared to how he felt the day before. The arbitrator notes that there are no videos of Petitioner walking back to his car to get the shackles to corroborate this testimony.

Incident reports were completed by Petitioner, Officer Louderburg, and Officer Smallwood. None of these reports, especially Petitioner's, includes anything with respect to Petitioner sustaining an alleged injury as a result of this arrest. Officer Smallwood's only description of the scene of the alleged work accident was that he provided a copy of some paperwork to the Bloomington Fire Department Rescue Personnel. He did not comment on Petitioner's reported difficulties or his observations of any struggle with the suspect. Officer Loudenburg wrote that he and Petitioner grabbed the suspect's left arm when the suspect was trying to walk away. Petitioner handcuffed the suspect behind his back while the suspect was trying to pull away. The two officers assisted the suspect into a seated position on the curb. Officer Loudenburg wrote the suspect wiggled around and started kicking his legs. He makes no mention of the three of them falling to the ground. He reported that Petitioner held the suspect still on his upper body while he held the suspect's legs. The report also notes that Petitioner placed shackles on the suspect's legs, Rescue was summoned, and the suspect was transported to the hospital. Officer Louderburg made no mention of Petitioner looking, or acting like he sustained any injury.

At trial Officer Smallwood testified that Petitioner caught his attention because he looked at him with a panicked look on his face. He interpreted this as though it looked like Petitioner was walking and that his legs were not working right. The arbitrator finds it suspicious that if this is what Officer Smallwood observed on 12/22/20, that he did not place this observation in the incident report, or at the least, ask Petitioner if he was okay at that time. For these reasons, the Arbitrator does not find the testimony of Officer Smallwood very persuasive.

Once at the hospital, Petitioner testified that his symptoms were more significant than they had been. As a result, he testified that he went off and called Dr. Nardone to see if he could get in earlier to see him than his appointment already scheduled for 12/28/20. Even though Petitioner testified that his symptoms were more significant than they had been, and he could not get into see Dr. Nardone any earlier than 12/28/20, Petitioner never mentioned his worsening condition to the paramedics that responded to the scene of the arrest, or to any medical personnel in the emergency room. Petitioner himself testified that at that time he "didn't know he hurt himself."

Petitioner also did not report this alleged accident to respondent, and continued working his regular duty job through 12/26/20. Petitioner did not indicate why he did not work on 12/27/20 and 12/28/20.

Prior to 12/22/20, Petitioner began experiencing problems with his upper and lower extremities as far back as 2012. In February 2012, Petitioner was involved in a motor vehicle collision that caused cervical pain and revealed pathology at the C5-C6 level. Although his condition improved, lingering issues persisted. In October 2017, another motor vehicle collision aggravated Petitioner's pre-existing cervical condition, leading to persistent neck pain. In November of 2020 Petitioner was unable to stand from a chair in the briefing room, and the police department had Petitioner leave work, and had an officer drive him home. However, it was noted that Petitioner's legs improved, and he was fine later that same day. Petitioner testified that he did not recall this incident, but the arbitrator notes it is reflected in the records of the examining physicians.

On 12/21/20, a day before the alleged accident, Petitioner went to see Dr. Nardone. Petitioner presented to Dr. Nardone complaining of an 8-9 month history of a burning feeling through his upper and lower extremities, as well as some stiffness without any association to an injury. Petitioner reported that cold weather makes his symptoms worse. Dr. Nardone examined Petitioner and noted numbness, tingling, and a burning feeling throughout the body. Petitioner also reported stiffness. Dr. Nardone's exam also noted bilateral Hoffman's sign and bilateral C4-C6 bouts of clonus. He also documented Petitioner having a spastic gait. Dr. Nardone concluded that Petitioner had signs and evidence, as well as an exam, compatible with a cervical myelopathy. Dr. Nardone ordered an MRI of the cervical spine and instructed Petitioner to return on 12/28/20.

Petitioner returned to Dr. Nardone as scheduled on 12/28/20. Dr. Nardone also reviewed the MRI of the cervical spine taken that same day. Petitioner testified that when he saw Dr. Nardone on 12/28/20 he told him about his increased symptoms without mentioning the work accident. The arbitrator finds it significant that Petitioner's testimony regarding his report of increased symptoms to Dr. Nardone on 12/28/20 is not recorded in Dr. Nardone's records for that date. Petitioner stated that he did not know any event at work that had anything to do with his condition. He also stated that he was still concerned about having cancer or ALS. Dr. Nardone examined Petitioner and noted that his overall situation was unchanged. An MRI performed that day revealed an elevated signal within the spinal cord at C5-C6, with degenerative changes resulting in severe bilateral neural foraminal stenosis and moderate to severe central canal stenosis. Following his examination, and review of the MRI, Dr. Nardone ordered a fusion of the neck, which Dr. Nardone performed on 12/31/20. The arbitrator finds it significant that Dr. Nardone specifically noted that Petitioner's overall condition on 12/28/20 was

unchanged from when he saw him on 12/21/20, and his diagnosis of cervical myelopathy was the same on both dates.

Given the fact that the symptoms Petitioner experienced on 12/22/20, were no different than the symptoms he was experiencing and reported to Dr. Nardone on 12/21/20, the arbitrator finds his complaints during the arrest were not new, but rather were consistent with his complaints to Dr. Nardone on 12/21/20. The arbitrator does not find Petitioner's claim that his symptoms on 12/22/20 were more significant than they had been persuasive, given that Petitioner did not report them to respondent on that date, he did not report them to the paramedics that responded to the call that day or to any personnel at the hospital when they brought the suspect there for evaluation, and did not report them to Dr. Nardone when he saw him on 12/28/20. The arbitrator also finds it significant that Dr. Nardone noted that Petitioner's condition on 12/28/20 was unchanged from 12/21/20, and that his diagnosis of cervical myelopathy remained the same on both dates, with it only being confirmed as a result of the MRI cervical spine Petitioner underwent on 12/28/20. The arbitrator also saw nothing in the credible medical records of Dr. Nardone documenting a phone call Petitioner made to Dr. Nardone on 12/22/20 where he reported his increased symptomatology and made a request for an earlier appointment with him before 12/28/20.

Based on his current condition of ill-being, Petitioner applied for a non-duty disability pension on 11/15/21. Petitioner filled out the application in his own handwriting. Question 11 on the first page of the application asks for the date of sickness, accident, injury or illness (referred to as the "event"). Petitioner wrote, "unknown event diagnosed 12/21/20." Question 13 asks for the location of the event, and Petitioner wrote "unknown." Question 14 asks for contact information for all persons who witnessed the event. Petitioner wrote, "unknown what caused injury." Question 15 asks the applicant to describe in detail how the sickness, accident, injury or illness was caused. Petitioner wrote, "unknown. Legs became weak and wobbly. Left hand became numb. Periods of difficulty walking or lifting feet led me to seek medical attention. MRI confirmed condition of cervical stenosis with myelopathy." At no time did Petitioner refer to, or relate his current symptoms to an alleged accident on 12/22/20 at work. Also, as of this date, Petitioner still had not reported any alleged injury at work on 12/22/20 to Respondent.

Based on the above, as well as the credible evidence, the arbitrator finds Petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury to his cervical spine that arose out of and in the course of his employment by respondent on 12/22/20.

Notwithstanding the arbitrator's finding as to accident, the arbitrator will address the issue of causal connection. Petitioner alleges his current condition of ill-being as it relates to his cervical spine is causally related to the alleged injury he sustained on 12/22/20. The respondent disputes this claim. Opinions were offered by various doctors as to the whether or not there exists a causal connection between the alleged injury on 12/22/20 and Petitioner's current condition of ill-being.

When Petitioner presented to Dr. Nardone on 12/28/20 he noted that Petitioner's condition was unchanged from when he saw him on 12/22/20. The arbitrator also finds it significant that during this visit Petitioner never reported any work place injury.

Beginning in May of 2021, Petitioner began seeking treatment at Mayo Clinic. Petitioner told Dr. Atkinson that he began noticing symptoms in the summer of 2019, that worsened. Dr. Atkinson was of the opinion that the symptoms at that time suggested spinal cord mechanisms taking place at that time. Petitioner complained to Dr. Konidis of left hand tingling, and spasticity in his lower extremities, more than the upper extremities. He reported that in 2019 he experienced shakiness, and his symptoms worsened in December of 2020, to the point where he consulted a neurologist. The arbitrator notes that this neurologist was Dr. Nardone, and he saw him on 12/21/20, the date before the alleged injury. Petitioner gave a history of the alleged incident, but did not tell Dr. Konidis that he saw Dr. Nardone the day before the alleged incident. When Petitioner asked Dr. Konidis if she saw a causal connection between his motor vehicle accident in 2012 and his current condition of ill-being, Dr. Konidis was unable to render an opinion. He did not ask her to provide a causation opinion between the alleged injury on 12/22/20 and his current condition of ill-being. Dr. Boeder also examined Petitioner at Mayo Clinic and Petitioner never mentioned any accidental injury on 12/22/20 while working.

On 7/8/22 Petitioner was examined by Dr. Fletcher as part of the pension board process. Petitioner gave a history of cervical spine issues stemming from a 2012 work related motor vehicle collision. Diagnostic testing of the cervical spine at that time showed pathology at C5-C6. Dr. Fletcher also noted that Petitioner had bilateral weakness and unsteadiness in 2016; had a subsequent 2017 work related motor vehicle accident; was unable to stand from a chair in a briefing room in November of 2020; and, in late 2020 was diagnosed with cervical myelopathy. Petitioner never mentioned the alleged accident on 12/22/20. Based on the history provided, Dr. Fletcher wondered why Petitioner was not pursuing an on-duty disability. The arbitrator finds it significant that Dr. Fletcher made this determination based on prior work accidents, that did not include the alleged accident on 12/22/20.

Petitioner then sought representation from Stephen Kelly Law Offices and; changed his pension application to an on-duty pension.

Petitioner was reexamined by Dr. Fletcher on 1/23/23. In his report, Dr. Fletcher noted three work accidents: the 2012 motor vehicle accident, the 2017 motor vehicle accident, and for the first time, the alleged accident on 12/22/20. Dr. Fletcher was of the opinion that Petitioner's gait was unsteady on the videos of 12/22/20. Although the arbitrator does not agree with this finding, the arbitrator find that even if Petitioner's gait was unsteady on 12/22/20, little weight is given to that finding given that Petitioner was unsteady prior to his visit with Dr. Nardone on 12/21/20. Dr. Fletcher also opined that the events of 12/22/20 were the straw that broke the camel's back and made Petitioner's cervical stenosis symptomatic causing proximal weakness. Again, the arbitrator does not find this opinion very persuasive given that Dr. Fletcher had already based his causation opinion on work accidents prior to 12/22/20; the fact that Petitioner's cervical stenosis was symptomatic and causing proximal weakness before 12/22/20 based on the history and complaints he provided to Dr. Nardone on 12/21/20; and, the fact that Petitioner's complaints on 12/28/20 were the same as they were on 12/21/20. Dr. Fletcher even admitted that the symptoms Petitioner demonstrated to Dr. Nardone on 12/21/20 were consistent with cervical myelopathy.

The Arbitrator notes that Dr. Fletcher in his deposition states that Petitioner told him about the incident on 12/22/20 when he first examined him in July of 2022, but the focus of the first examination was not to determine causation. The arbitrator does not find this statement persuasive given that if the focus of the first examination was not to determine causation, then why would Petitioner provide a history of his work injuries in 2012 and 2017, but not the alleged accident on 12/22/20. The arbitrator believes it is because the Petitioner did not believe he injured himself on 12/22/20 when he saw Dr. Fletcher in July 2022, and that is why the Petitioner made no mention of any alleged injury on 12/22/20 to Dr. Fletcher at that time. Given that Dr. Fletcher appears to provide very detailed histories from the patient in his reports, the arbitrator find it very unlikely that Petitioner would have mentioned the incident on 12/22/20 during Dr. Fletcher's first examination in July of 2022, and Dr. Fletcher would not have included it in his report.

Dr. Miz examined Petitioner on 8/4/22, also as part of the pension review process for Petitioner's non-duty disability. Petitioner noted the 2012 motor vehicle accident; difficulty running in 2016; lower extremity weakness while waterskiing in 2018; hard time picking up his legs especially when running in 2019; and, generalized weakness in his lower extremities, as well as stiffness in his legs and navigating stairs. Petitioner also told Dr. Miz of an episode where he could not stand from a chair in the briefing room. Petitioner reported this history of progressive cervical myelopathy symptoms beginning in 2016. He also mentioned extreme

stiffness in his legs during an arrest in December of 2020, but failed to mention his visit to Dr. Nardone on 12/21/20 and the symptoms associated with cervical myelopathy he reported at that time.

Initially, Dr. Miz determined that Petitioner's disability is primarily related to a preexisting condition of cervical spine stenosis with progressive myelopathy. Dr. Miz deemed the 2012 and 2017 incidents unrelated to his disability, but found the incident on 12/22/20 at work contributed to the progression of his disability. The arbitrator does not give great weight to this opinion given that Dr. Miz was unaware that Petitioner was examined on 12/21/20 and 12/28/20 by Dr. Nardone, and Dr. Nardone noted that between those two dates his symptomatology remained unchanged, as well as his diagnosis of cervical myelopathy.

During his deposition, Dr. Miz testified that if Petitioner thought he was injured as a result of an incident at work, he would have included it in his 11/15/21 application for disability pension. Dr. Miz agreed that Petitioner's cervical myelopathy condition dated back to at least 2016 and that it was a progressive condition. He also confirmed that the incident described by Petitioner from before December 2020 when he could not stand, was consistent with cervical myelopathy. Despite Petitioner's claim that he suffered from increased weakness in his legs on 12/22/20, Dr. Miz testified that he saw nothing in the videos that he could point to and say "that was the spot when something happened." He further testified that Petitioner seemed to be able to walk around on the videos, and he could not observe any symptoms from watching the videos. Dr. Miz agreed that if Petitioner saw Dr. Nardone, a neurosurgeon, one day before the activities in question, and gave a history of right leg numbness and tingling and burning throughout the body for the previous 8-9 months, that would be consistent with cervical myelopathy. Dr. Miz also testified that complaints of stiffness would be consistent with cervical myelopathy. Dr. Miz agreed that a bilateral Hoffman's sign, bilateral 5-6 bouts of clonus, and a spastic gait were also all consistent with cervical myelopathy.

Based on this additional information, Dr. Miz could no longer opine that Petitioner's work incident on 12/22/20 contributed to his need for surgery. He explained that unless there was an increased degree of objective weakness or deficits, then no connection can be made. Dr. Miz testified that unless Dr. Nardone made these findings 6 days after the work activities, there would be no objective changes as a result of the alleged accident on 12/22/20. The arbitrator finds these opinions of Dr. Miz most persuasive given that Dr. Miz's updated opinions were based on a more complete history that included Petitioner's visits with Dr. Nardone on 12/21/20 and 12/28/20, and the fact that Petitioner demonstrated no objective changes in his condition between 12/21/20 and 12/28/20.

Lastly, Dr. Deutsch examined Petitioner on 6/26/24. Petitioner provided a history of all three work incidents. Based on Petitioner's history, as well as his application for non-duty pension, and the videos of the events in question, Dr. Deutsch opined that there is no causal connection between Petitioner's job duties on 12/22/20 and his current condition of ill-being. Dr. Deutsch based this opinion on Petitioner's visit to Dr. Nardone on 12/21/20, and the fact that his symptoms and condition remained unchanged when he returned to Dr. Nardone on 12/28/20. Dr. Deutsch also viewed the video of the events on 12/22/20 and was of the opinion that the Petitioner was functioning normally and did not have any physical activity that would be consistent with a possible injury. Dr. Deutsch did not see Petitioner fall or struggle, or perform any physical activity consistent with a possible injury. Dr. Deutsch, based on Dr. Nardone's record of 12/21/20, was of the opinion that Petitioner was already a surgical candidate on that date due to his spinal cord compression.

Based on the above, as well as the credible evidence, and notwithstanding the arbitrator's finding on the issue of accident, the arbitrator finds the Petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to the alleged accident on 12/22/20.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT?

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

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

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

Based on the arbitrator's findings as they relate to the issues of accident and causation, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC002389
Case Name	Piotr Tarnowski v. Kabini Inc./Skyway Express Transport, Inc & IWBf
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0008
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Matthew Belcher
Respondent Attorney	Randall Wolff, Megan Murphy

DATE FILED: 1/20/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

11 WC 002389
 21 IWCC 0600
 Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PIOTR TARNOWSKI,

Petitioner,

vs.

NO: 11 WC 002389

KABINI TRUCKING, Inc.. SKYWAY EXPRESS
 TRANSPORT, Inc. and INJURED WORKERS'
 BENEFIT FUND,

Respondents.

DECISION AND ORDER ON REMAND

This matter comes before the Commission on remand from the Circuit Court. The Circuit Court issued an order on November 17, 2023, remanding this matter to the Commission for further fact finding whether an employer-employee relationship existed between and among the parties. The Circuit Court also remanded the matter for a finding on whether Petitioner be allowed to add Kabini, Inc., on the basis that the failure to include them on the original application for benefits was due to a misnomer.

Petitioner claims to have sustained a work-related accident on August 27, 2010, while parking a truck owned by Respondent Kabini Trucking, Inc. Petitioner asserts that the parking brake failed on the truck, and it rolled a short distance striking a trailer parked ahead of him at a speed of 10-15 mph. According to Petitioner he injured his right elbow and his low back. Neither of the Respondents carried workers' compensation insurance and the Injured Workers Benefit Fund was named as an additional Respondent.

11 WC 002389

21 IWCC 0600

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All issues were contested at hearing. Petitioner reported the incident to Respondent by telephone shortly following the event. No written report of accident was made. Respondent agrees that Petitioner called in notice of the incident but asserts he did not report any injury until months later. The incident occurred in Des Moines, Washington. Petitioner got a ride back to Illinois from a fellow truck driver.

Petitioner sought care from his chiropractor on August 30, 2010. By history he saw the chiropractor regularly for chronic low back pain. He reported to his chiropractor that he was experiencing low back pain and right wrist pain and numbness. He was referred for nerve conduction studies which revealed some compression of the ulnar nerve and mild carpal tunnel. The clinical note of Dr. Patel, of December 8, 2010, (RX8) states;

Patient's history as a truck driver could indicate that he has a lot of compression at the wrist with ulnar nerve as patients who tend to ride bikes or grip a steering wheel for long hours do have affected ulnar nerve at the wrist. In addition, the patient also has right median nerve, what I would call a mild carpal tunnel, only being affected on sensory studies and normal on motor studies.

Petitioner underwent cubital tunnel release surgery on December 29, 2010.

Petitioner was released to return to work on April 7, 2011. He never returned to work for Respondents. In May 2011 Petitioner returned to work as a truck driver for another company. Petitioner underwent L5-S1 lumbar decompression by Dr. Sokolowski. He was determined to be at MMI on October 23, 2015. At hearing Petitioner testified that he has subsequently returned to work as a self-employed truck driver. He sustained lower back injuries in a motor vehicle accident in August 2018.

At issue in the case is whether Petitioner was an employee of Respondent Kabini Trucking Inc. and/or Skyway Express Transport or whether he was an independent contractor. Hearing was conducted on September 18, 2020. The Arbitrator determined that Petitioner failed to meet his burden of proof that he was an employee of Respondent(s) at the time of the alleged incident and denied the claim. Petitioner did not introduce any documentary evidence in support of his assertion that he was an employee of Respondents apart from several paychecks which reflect there was no withholding of taxes or social security. Respondent introduced Petitioner's federal tax documents and filed returns for 2009 and 2010 which also did not support an employee-employer relationship.

Petitioner's direct testimony failed to address many issues germane to the issue of control exercised by Kabini Trucking, Inc. in his daily activities as a driver. The element of control over the manner in which Petitioner performed his work is one of the key factors in determining whether the worker was an employee rather than an independent contractor. The Arbitrator found and the Commission on Review affirmed that Petitioner failed to prove by a preponderance of

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the evidence that he was an employee of Kabini Trucking Inc., and/or Skyway Trasport Express at the time of the accident.

The Circuit Court order on remand stated as follows:

That the Commission's Decision and Opinion on Review dated December 14, 2021, is hereby SET ASIDE;

That the matter is hereby REMANDED to the Commission for further fact finding on the disputed issue of whether an employee-employer relation existed between, and among the parties on the date of the claimed accident;

That in making a determination as to the disputed employee-employer relationship the Commission is to weigh each of the legally relevant factors identified by Illinois courts of review: (1) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express Transport, exercised control over the manner in which the Petitioner performed his work; (2) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express, dictated the Petitioner's schedule; (3) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express Transport, paid the Petitioner; (4) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express Transport, withheld income and social security taxes from the Petitioner's (*sic*); (5) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express Transport, could discharge the Petitioner at will; (6) whether the Respondents, Kabini Trucking Inc. and/or Skyway Express Transport supplied the Petitioner with needed instrumentalities; (7) whether the Respondents, Kabini Trucking, Inc. and/or Skyway Express Transport, general business encompassed the Petitioner's work; the label the parties placed on their relationship; and (9) whether the parties relationship was long, continuous, and exclusive; See *Roberson v. Indus. Comm'n.*, 225 Ill. 2d 159,175 (2007); *Wenholdt v. Industrial Comm'n.*, 95 Ill.2d 76, 80-81 (1983); *Ragler Motor Sales v. Industrial Comm'n.*, 93 Ill.2d 66, 71 (1982); *Bauer v. Industrial Comm'n.*, 51 Ill.2d 169, 172 (1972); See also *Labuz v. Illinois Worker's Comp. Comm'n.*, 2012 IL App (1st) 113007, 29-30 (2012); *Ware v. Indus. Comm'n.*, 318 Ill. App.3d 1117, 1122, (2000); *Peesel v. Industrial Comm'n.* 224 Ill. App. 3d 711, 716 (1992);

That the Commission is also to determine whether the naming of 'Kabini Trucking, Inc.,' instead of "Kabini, Inc." constituted a misnomer under the law. See 735 ILCS5/2-401(b); *Illinois Institute of Technology Research Institute v. Industrial Comm'n.*, 314 Ill. App. 3d 149 (2000);

That, in the event the Commission determines, after analyzing all of the relevant factors at issue, that an employment relationship existed between one or more of the Respondents and Petitioner, the Commission is to make findings of fact as to whether or not the Respondents were "joint employers" or whether or not the Respondents had a "loaning and borrowing" relationship pursuant to Section 1(a)(4) of the Act (820 ILCS 305/1(a)(4)).

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That, in the further event that an employment relationship is found to have existed between and among Petitioner and one or more of the Respondents, the Commission shall make additional findings concerning all the further issues disputed by the parties at the arbitration of this matter;

That the Commission is authorized to further remand the matter to the Arbitrator; conduct further hearings of its own; or employ whatever methods it deems necessary in order to comply with this order;

That this matter is disposed. See *Kudla v. Indus. Comm'n*, 336 Ill. 279, 282 (1929) (holding that, following review, the circuit court exhausts its statutorily-conferred jurisdiction and any “attempt to retain further jurisdiction [is] void”).

That this order is without prejudice to any future appeal of the Commission’s eventual decision following this remand taken pursuant to 820 ILCS 305/19(f).

Though the Commission finds no basis in the law, or the record made at arbitration, we are compelled to follow the Order of the Circuit Court of Cook County dated November 17, 2023. By this order we are instructed to make additional findings of fact regarding the employment relationship between the parties, keeping in mind that we are bound by the record made at the Arbitration hearing, as no additional evidence may be adduced on Review. We have followed the Court’s directive to the extent possible and now again make the following findings of facts and the following Decision on Review, pursuant to this Remand.

Turning to the merits of Petitioner’s claim, the Commission notes the many inconsistencies both within and between the testimony of Petitioner and Marek Myslek, an employee of Respondent Kabini Trucking and purported “boss” of Petitioner. As the Arbitrator stated in her Decision significant reliance was placed upon the documentary evidence adduced at hearing because of the many inconsistencies in the testimonial evidence adduced and questionable reliability of each of these witnesses.

As a general observation the Commission finds that as the burden of proof rests on Petitioner the variability in the substance of his testimony combined with his evasiveness and the argumentative quality of his responses on cross examination are troubling. This reflects adversely on his persuasiveness as a witness on his own behalf. The Arbitrator, and the Commission on review determined the credibility of both Petitioner and Myslek to be contradictory, self-serving, questionable and unreliable. The Commission on remand makes the same findings.

The circuit court in its remand order tasked the Commission with additional fact-finding preliminarily on the issue of whether there was an employer-employee relationship and between Petitioner and either of the Respondents. The circuit court specifically referenced in its analysis the requirement that an administrative agency make findings sufficient to permit a judicial review of its decision as an element of due process. See *Reinhardt v. Board of Education*, 61 Ill.2d 101, 103, 329 N.E.2d 218 (1975).

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There is a deficiency of testimonial evidence on direct examination elicited from Petitioner on several key elements critical to a determination of whether he was an “employee” of Kabini Trucking, Inc. and virtually no evidence on this issue pertaining to Skyway Transport other than 1099 forms for 2009 and 2010. Petitioner testified that he occasionally drove a truck locally which displayed Skyway Transport signage. The documentary evidence is also unpersuasive in establishing an employer-employee relationship.

Respondent offered Petitioner’s Driver’s Application for Employment as RX21. The application is not instructive on the issue of whether Petitioner was hired as an employee or independent contractor. The information on the application reflects that Petitioner applied for a position as a truck driver with Kabini Inc. on January 2, 2008. Petitioner’s address was in Jacksonville, Florida, where he had resided for 8 years. His social security number and date of birth are reflected on the application. Other than these details the application is blank and unsigned. There is no description or characterization as to the nature of the work relationship as that of employee versus independent contractor. There is no reference to Skyway Transport on the application. Information as to Petitioner’s prior addresses, criminal history, and employment history are all blank.

Petitioner’s Federal Income Tax Returns for 2009 and 2010 were offered into evidence by Respondent and received into evidence as RX23 and RX24. On cross examination Petitioner was shown his tax returns. He admitted his federal income tax returns for 2009 reflected “business loss or income loss” on a Schedule C which specifically applies to “Sole Proprietorship”. Petitioner listed his occupation as “self employed”. He received a 1099 from Skyway Transport. Under his Schedule C he reported a \$12,472.00 net profit for 2009. T 71. The Commission notes that Petitioner’s self- reporting of occupation on federal forms 1040 are made under penalty of perjury.

Petitioner filed a Schedule C sole proprietorship tax form for 2010 also. He reported his net income or net profit as a self-employed truck driver in year 2010 as \$10,729.

Neither Kabini Trucking, Inc., nor Skyway Transport, Inc. withheld income or social security taxes from Petitioner’s compensation. Petitioner volitionally availed himself of the tax advantages conferred by his self-declared status as a self-employed trucker to reduce his tax liability in 2009 and 2010. The Commission views this as evidence of Petitioner’s status as a self-employed independent contractor. When Petitioner was specifically asked at hearing on cross examination as to why he filed Schedule C forms in 2009 and 2010 he deflected, testifying that his wife took care of all financial matters. T 72. Petitioner then went on to testify that he filed Schedule C deductions because “...Skyway Express probably gave me improper forms.” Petitioner claimed not to understand when he was further pressed on the question of his personal responsibility for filing his own tax returns. Finally, he claimed that he had no other way to file his tax return due to the 1099 form provided by Skyway. T73.

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The Commission is mindful of the relative weight to be afforded to the control asserted by Respondent over Petitioner's work activities in comparison to compensation issues. *See Roberson*, 225 Ill 2d at 175. In analyzing the right of control component, the Commission points out that Petitioner failed to present any affirmative evidence of Respondent's right to control that would have been persuasive on the issue of his employment status. It is noted that the truck driven by Petitioner was owned and maintained by Kabini Trucking. Marek Myslek was the dispatcher for both Respondent companies.

Petitioner was not asked on direct examination whether Kabini Trucking, Inc. and/or Skyway Transport dictated his daily schedule, dictated the route he took on long distance runs, whether he is required to wear a uniform, whether approved fuel stops were specified, and whether the parties' relationship was long, continuous, and exclusive. The application for employment reflects that Petitioner's employment commenced sometime after January 2, 2008. RX21, not August 2007 as Petitioner testified.

Petitioner testified that Marek Myslek controlled the manner in which he worked and dictated his job duties. However, Myslek testified that he acted as a dispatcher for multiple companies and was not the owner or officer of either Kabini or Skyway. Furthermore, Petitioner testified only that Myslek advised him where he would be driving the truck each week but did not testify that Myslek directed him when to drive, what route to take, what procedures were required when unloading, or exerted any other control over how Petitioner made the deliveries.

Petitioner testified to prolonged absences from employment of several months duration when he made visits to Poland. There is no evidence concerning whether Petitioner had to request time off from Respondents. There was no testimony elicited from Petitioner that his relationship with Kabini/Skyway was exclusive. Petitioner testified only that he did not "have time" to drive for other carriers, not that he was restricted from doing so.

Petitioner testified that he was paid by the trip and the number of "unloads" he made. T 22. Petitioner was paid for each completed trip not by the hour or based on mileage. Petitioner would receive payment from Marek Myslek either in cash or by check paid from the Skyway account upon his return from each completed trip. It was unclear whether Petitioner was provided with cash to pay for expenses or whether he advanced costs and was reimbursed by Mr. Myslek. Marek Myslek was the dispatcher and advised him where he would be driving the truck each week. T 20.

Petitioner repeatedly testified to his understanding that both Kabini Trucking, Inc. and Skyway Transport were owned by Marek Myslek and that he was employed by Myslek. T 32-33. In fact, the Secretary of State records reflect that Mr. Myslek was neither an officer nor registered agent of either Kabini Trucking, Inc. or Skyway Transport. RX19. The sole officer for both entities was Malgorzata Myslek, Marek Myslek's former wife.

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The Commission further notes a significant disparity in the earnings reported by Petitioner in his tax returns and the earnings Petitioner claimed on the Request for Hearing (AX1) line item 5 which documents the earnings claim for computation of average weekly wage. The Petitioner claims to have earned \$83,200.00 in the year (2009-2010) preceding the injury. This disparity raises the question of whether Petitioner had outside employment which would defeat exclusivity and support independent contractor status.

No rigid rule exists regarding whether a worker is an employee or independent contractor. The question is one of fact. Per Ware the single most important factor is whether the purported employer has the right to control the actions of the employee. In the present case there was no evidence introduced that other than dispatching Petitioner on long haul trips that Respondent exercised control over his day- to- day activities or how he performed his job.

There was no evidence that Respondent provided any benefits package or that there was any level of contact between Respondent and Petitioner while he was on the road performing his assigned duties. This case represents a significant factual difference from *Labuz v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 11307 WC, .29-30 where the claimant was required to call in to respondent everyday by 11:00 am to report his movements or face a fine and the evidence was that the respondent would call claimant ten times per day. Furthermore, in *Labuz* the dispatcher chose the routes taken by claimant.

Finally, the remand order charges the Commission "to determine whether the naming of "Kabini Trucking, Inc." instead of "Kabini, Inc." constituted a misnomer under the law. See 735 ILCS 5/2-401(b); *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App.3d 149."

The initial question in making the determination as to misnomer is based upon an analysis of the objective manifestations of intent contained in the record. If misnomer applies, then the amended complaint (or in this case application for benefits) would relate back to the date of initial filing providing all of the elements of the Illinois relation back statute are met.

Illinois' relation back statute 735 ILCS5/2-616(d) provides that "a cause of action against a person not originally named as a defendant is not barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought if all the following terms and conditions are met;

- (1) The time prescribed or limited had not expired when the original action was commenced;
- (2) The person, within the time that the action might have been brought or the right asserted against him or her, plus the time for service under Supreme Court Rule 103(b), received such notice of the commencement of the action that the person will not be prejudiced in maintaining a defense on the merits and knew or should have

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known that, *but for a mistake concerning the identity of the proper party, the action would have been brought against him.*

- (3) It appears from the original and amended pleadings that the cause of action asserted in the amended pleading grew out of the same transaction or occurrence set up in the original pleading.

In the present case 14 years expired between the occurrence naming Kabini Trucking, Inc. as Respondent and Petitioner's naming Kabini, Inc. There is no question that Petitioner's claim against Kabini, Inc. is on its face time barred. However, Section 2-401(b) of the Code of Civil Procedure states;

'Misnomer of a party is not ground for dismissal, but the name of the party may be corrected any time, even after judgement, on motion, upon any terms and proof the court may require. Misnomer may be corrected at any time, even after the statute of limitations has run. Misnomer is a mistake in the name or the provision of an incorrect name to the person in accusation or pleading. Misnomer means that the party is styled in other than his or her own name. Misnomer does not encompass naming the wrong party but instead encompasses naming the right party by the wrong name.'

Petitioner timely filed his application for benefits against Kabini Trucking, Inc., Skyway Express Transport, Inc., and the Injured Workers' Benefit Fund. Petitioner did not name Kabini, Inc. as a party until July of 2024, 14 years following the occurrence, four years after trial of the matter on the merits. Kabini, Inc. is a separate company and owned by a different person who is not an officer or owner of Kabini Trucking, Inc. For this reason the question of notice and the opportunity to defend against the claim is questionable.

Petitioner seeks to name both Kabini Trucking, Inc., and Kabini, Inc. This is clear evidence that Petitioner seeks to add an additional party at this late date, not correct a misnomer. The Commission therefore finds based upon the foregoing analysis that the failure to name Kabini, Inc. as a Respondent was not a misnomer and that the addition of this party is not timely and is barred by the statute of limitations.

For the foregoing reasons the Commission further finds that Petitioner failed to prove to a preponderance of the evidence that he was an employee of Respondents Kabini Trucking, Inc. and/or Skyway Express Transport, Inc. on the date of the accident and therefore Petitioner's claim is denied as there was no employer employee relationship.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's claim for benefits is hereby denied.

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IT IS FURTHER ORDERED BY THE COMMISSION that the motion of Petitioner to add Kabini, Inc., as an additional party Respondent is hereby denied.

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.

January 20, 2026

d-11/25/25

SM/msb

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/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

DISSENT

I respectfully dissent from the opinion of the majority and would find that Petitioner was jointly employed by Kabini Trucking, Inc., (“Kabini Trucking”) and Skyway Express Transport, Inc. (“Skyway”). I would find Kabini Trucking to be a misnomer for Kabini, Inc., and that Skyway was operating as a loaning employer under the statutory definition of §1(a)(4), as well as that Kabini, Inc., was operating as a borrowing employer.

The Order of the Circuit Court remanding this matter to the Commission found that the Commission’s December 14, 2021, Decision did not properly articulate the factual bases for its decision. The remand ordered further fact finding and authorized the Commission to remand the claim to the Arbitrator for further hearings if necessary. The Commission was directed to weigh each of the nine factors of the employee-employer relationship provided by law. If the Commission found an employment relationship, it was directed to determine whether the naming of Kabini Trucking, instead of Kabini, Inc., was misnomer. Finally, if the Commission found an

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employment relationship, the Commission was to make findings regarding the issues of joint employment and loaning and borrowing employment.

The Commission was directed to make additional findings employing whatever methods it deemed necessary. For this reason, I have closely scrutinized the partial records introduced by the respondent/employers and applied the Commission's authority to utilize judicial notice. I note that my doing so is consistent with Rule of Evidence 201(f), which permits a court to take judicial notice at any stage of a proceeding, and I am persuaded by *Bowen v. Illinois Workers' Compensation Comm'n*, 2023 IL App (4th) 220575WC-U, that I am authorized to do so. I find as follows.

FINDINGS

According to official Commission records, Petitioner mailed his original Application, and the Commission mailed its original notice under 9020.20(d), to Kabini Trucking at 1807 A Vermont Drive, Elk Grove Village, Illinois.

Respondent/employers introduced Exhibits 15 and 16, printouts from the Public Access to Court Electronic Records ("PACER") and copies of bankruptcy documents for bankruptcy cases 17-82792 and 18-80263, the bankruptcies of Malgorzata Myslek ("Malgorzata") and Kabini Trucking respectively. The printouts are case captions and docket printouts, along with a copy of an unfiled Schedule E/F Unsecured Creditors of Kabini Trucking and a partial copy of Malgorzata's unfiled Schedule E/F. I find these partial documents of limited probative value. For that reason, I have reviewed the official and complete Voluntary Petitions of Malgorzata, Kabini Trucking, and Marek Myslek ("Mr. Myslek").

On March 6, 2009, Mr. Myslek filed for bankruptcy under Chapter 7 of the Bankruptcy Code in the Northern District of Illinois, case 09-70811. There is sufficient identifying information matching that of the witness for me to be satisfied that this is the same Marek Myslek that testified on September 18, 2020. In his bankruptcy petition, Mr. Myslek reported that he dwelled at 1556 Magnolia Drive, Crystal Lake, and that he had formerly been in operation of business under the name of M&M Express. Mr. Myslek identified in Schedule B – Personal Property that he was the 100% shareholder of M&M Express Logistics. In his Schedule I – Current Income of Individual Debtor he described himself as a self-employed dispatcher, with six months in that employment. In his Statement of Financial Affairs he stated that he had been engaged in business under the names: M&M Express, Inc., from 2003-2004; M&M Express Trucking Co. from 2004-2007; and M&M Express Logistics from 2006 through March 6, 2009.

On November 27, 2017, Malgorzata filed for bankruptcy under Chapter 7 of the Bankruptcy Code in the Northern District of Illinois. In her Voluntary Petition she provided her

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residence address at 1556 Magnolia Drive, Crystal Lake, Illinois. In Schedule A/B: Property she reported that she owned Kabini Trucking, which had stopped doing business March 30, 2017. In her Statement of Financial Affairs she listed an ownership or other connection to Kabini Trucking, which had operated from 3/05/09 – 3/30/17, and Skyway, which had operated from 3/10/05 – 8/10/12. Both businesses were operating out of the 1556 Magnolia Drive address and utilized Ewa Zewada as their accountant.

On February 8, 2018, Kabini Trucking filed for bankruptcy under Chapter 7 of the Bankruptcy Code in the Northern District of Illinois. On the Voluntary Petition the corporation's principal place of business was listed as 1556 Magnolia Drive, Crystal Lake, IL. Malgorzata signed as President on behalf of the corporation. The petition fails to name the shareholders and officers in response to question 28 of the Statement of Financial Affairs.

I note that when completing a Bankruptcy Petition the debtor declares that their answers are true and correct under penalty of perjury.

Respondent/employers introduced printouts from the Illinois Secretary of State's Corporation Certificate of Good Standing search as Exhibits 17, 18, and 19.

Exhibit 19, for Kabini Trucking, shows a corporation which was incorporated on March 5, 2009, and involuntarily dissolved August 11, 2017. As of 2015, its Agent and President was Malgorzata at 1556 Magnolia Drive, Crystal Lake, IL. According to official Secretary of State records, prior to September 30, 2015, it reported its registered Agent as located at 1807 A Vermont Drive, Elk Grove Village, Illinois.

Exhibit 18, for Kabini, Inc., shows a corporation which was incorporated on December 1, 2004, and dissolved on May 10, 2013. As of 2012, its President and Agent was Marek Budny, with an address at 1556 Magnolia Dr., Crystal Lake, IL 60014. Secretary of State records show the Magnolia address was reported as the principal place of business in November of 2007, and that Marek Budny was also the reported Director at that address.

Exhibit 17, for Skyway, states that Malgorzata, at the Magnolia Drive address, was the President of that corporation. The corporation was formed on March 10, 2005, and dissolved on August 10, 2012. Relevantly, Exhibit 17 and the Illinois Secretary of State records show that an inactive assumed name of Skyway was M&M Express Company.

Secretary of State records, made available on the Corporation Certificate of Good Standing search, show M&M Express, Inc., was incorporated on June 10, 2003, and dissolved on November 1, 2005, with Mr. Myslek as its President and Agent. M&M Express Transport Company was incorporated on March 1, 2005, and is still in active status. According to its March 5, 2010, Annual

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Report that company had a principal place of business at 1556 Magnolia Drive, Crystal Lake, Illinois.

Mr. Myslek testified that he owned Albert Trucking, Inc., in 2010, but was uncertain if it was operating at that time. According to Secretary of State records, Albert Trucking was a corporation with Mr. Myslek as listed Agent, and that the company incorporated in 2012 and has not dissolved. A 2014 annual corporate report listed Mr. Myslek as Owner, President, and Director. The 2021 – 2024 reports, filed in 2024, reported Malgorzata was then President, Secretary, and Director.

Reviewing the record, I wish to note additional facts not highlighted by the majority.

Counsel for Respondent stated on the record that Mr. Myslek was present in his role as a party to the claim. Mr. Myslek's sworn testimony was that in 2010 he was an employee of Kabini, Inc., and an employee of Skyway. He claimed to have no ownership interest in any of the three corporations, (Kabini, Inc., Kabini Trucking, or Skyway) before or at the time of accident. No evidence was introduced that he was an officer of any of those three corporations.

Respondent's Exhibit 21, the Driver's Application for Employment, is completed in two different handwritings and completed with two different writing implements. Petitioner's personal details are completed in one handwriting with a darker, thicker, color, and the corporate details and date of application are done in another handwriting with a lighter, thinner, color. The document is not signed.

Petitioner testified that Kabini Trucking was a transport company with a warehouse in Elk Grove Village, Illinois. Petitioner believed there were ten employees.

Mr. Myslek testified that Kabini Trucking was not an active company in 2010. The only employee was the owner, Malgorzata. He testified further that the company did not start activity until 2011 or 2012.

Mr. Myslek testified that he was the dispatcher for Skyway, and that he was authorized to issue checks to Petitioner from Skyway accounts. Mr. Myslek also received pay checks from Skyway accounts. Discussing payroll, Mr. Myslek's testimony was that "Skyway paid the employees (emphasis added)" T. 165. In 2010, Skyway had about five employees, including Mr. Myslek as dispatcher and his wife Malgorzata as owner.

I have reviewed the checks introduced into evidence. I note that two different banks with different routing and account numbers were used to pay Petitioner, and that two different signatures appear on the face of the checks.

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Mr. Myslek testified that Petitioner was working for Kabini, Inc., on the date of the accident, and that that Kabini, Inc., had the right to fire Petitioner. He testified that either Kabini, Inc., or Marek Budny was the owner of the truck Petitioner was driving on the date of accident. Mr. Myslek claimed that Kabini, Inc., had one truck and employed one driver. Mr. Myslek was the hiring Agent for Kabini, Inc.

Mr. Myslek testified that he was a dispatcher, a check writer, and a hiring agent for Skyway and for Kabini, Inc.

ANALYSIS

Credibility

Ownership of a corporation is not directly relevant to the matter at hand, but Mr. Myslek's credibility has been called into question by the Arbitrator. I find the information provided in the bankruptcy petitions further calls Mr. Myslek's credibility into question. His bankruptcy Petition clearly states he had an ownership in 'M&M' labeled corporations, which are also alternate names for respondent Skyway. This contradicts his claim his wife was sole owner of Skyway. His allegation that Marek Budny owned Kabini, Inc., is unsubstantiated and self-serving. Kabini, Inc., reportedly had one driver and one dispatcher, and its President accepted mail at Mr. Myslek's personal residence. I have serious concerns regarding the interrelatedness and rapid succession of these companies and am not convinced Mr. Myslek was forthcoming.

In contrast, I found Petitioner's testimony to have more hallmarks of credibility than the Arbitrator. He testified that he met with Mr. Myslek to be hired for his position, and Mr. Myslek testified he was the hiring agent for both corporations active at that time. He testified the employer had a warehouse in Elk Grove Village, and Secretary of State records confirm it accepting mail in that village. The manner of his testimony seemed to have been disrupted by being repeatedly requested to authenticate documents in a language he could not read. I would find his testimony consistent with the verifiable facts, and his manner credible.

Employment

Concerning the nine factors which the Arbitrator directed the Commission to weigh, I find as follows.

First, Kabini Trucking and/or Skyway exercised control over the manner of Petitioner's work by providing to him the truck or trucks that he used, by having it parked at their warehouse when not in use, requiring him to go to the truck in his personal car and to operate their truck. Mr. Myslek assigned him trips and would call him to tell him where to go. Respondent/employers

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would handle repairs, and the trucks would have the logo of either Kabini Trucking or Skyway. I consider this is in favor of employment.

Second, Kabini Trucking and/or Skyway exercised control over Petitioner's schedule. Work schedules in the long-haul trucking industry are controlled by law, and Petitioner's daily hours were controlled by the regulations of that industry. I find Petitioner relinquished control of his schedule to Mr. Myslek as part of his employment. I consider this is in favor of employment.

Third, Kabini Trucking, Inc., and/or Skyway paid Petitioner. Petitioner introduced pay checks drawn on Skyway accounts from February, May, June, July, and August of 2010. Further, Skyway issued 1099-MISC forms for Petitioner for years 2009 and 2010. This shows that the system of payment by Skyway was longstanding. No evidence was introduced of other 1099 income from Kabini Trucking, Kabini, Inc, or any other employer. This factor weighs heavily toward employment.

Fourth, no withholding of income or social security taxes was done. This factor weighs against employment.

Fifth, Mr. Myslek's testimony was that Kabini, Inc., had authority to discharge Petitioner. My Myslek's testimony was that he personally had hiring and firing authority. This testimony is against Respondent/employers interests, and so is credible. I consider this strongly in favor of employment.

Sixth, Petitioner's testimony was that he was supplied with the truck he used in his job and that Respondent/employers were responsible for repairs and maintenance. The DOT report corroborates that the truck was owned by Kabini, Inc., as does Mr. Myslek's testimony. Based upon the testimony, there may have been an exchange of consideration between Kabini, Inc, and Skyway, the details of which were not provided to the Commission. I consider this is in favor of employment.

Seventh, the general business of the Respondent/employers was transportation of goods by truck, and Petitioner was employed towards those ends. This factor weighs heavily toward employment.

Eighth, the label the parties placed on their business was one of employment. The pre-printed portions of the Drivers Application for Employment introduced as Respondent's Exhibit 21 are for "Employment". I consider this in favor of employment.

Ninth, the parties' relationship extended between the employment application, dated January 2, 2008, and August 27, 2010, the date of accident. This is a period of two and one-half years. While Petitioner testified to a period of 4 months when he was absent to care for his mother.

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I do not consider this family medical leave to be excessive and consider it consistent with family leave laws. I consider his employment long and continuous. Neither party introduced evidence regarding exclusivity. This factor weighs heavily toward employment.

I note that no party introduced any employment contract, independent contractor agreement, or other contract for use of the equipment.

No single factor is determinative, and the significance of these factors will change depending on the work involved. The determination rests on the totality of the circumstances. The right to control the manner of the work is generally the most important factor and whether the employer's general business encompasses the person's work is also important. *Roberson v. Industrial Comm'n (P.I. & I. Motor Express, Inc.)*, 225 Ill. 2d 159, 866 N.E.2d 191 (2007).

I have considered the factors in their totality and considered the case law under *Earley v. Industrial Comm'n.*, 197 Ill. App. 3d 309, 553 N.E.2d 1112 (4th Dist. 1990), *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 743 N.E.2d 579 (1st Dist. 2000), and *Roberson v. Industrial Comm'n (P.I. & I. Motor Express, Inc.)*, 225 Ill. 2d 159, 866 N.E.2d 191 (2007). In the totality, I consider that Petitioner met his burden by preponderance of the evidence that he was an employee under the Act.

Misnomer

"Misnomer is a mistake in name or the provision of an incorrect name to the person in accusation or pleading. [Citation.] It means nothing more than that a party is styled in other than his or her own name." *Bristow v. Westmore Builders Inc.*, 266 Ill. App. 3d 257, 260, 203 Ill. Dec. 680, 640 N.E.2d 339 (1994).

Misnomer exists when actual notice of the suit is given to the real parties in interest but the complaint does not refer to a person by his or her correct name. *Zito v. Gonzalez*, 291 Ill. App. 3d 389, 392-393, 225 Ill. Dec. 617, 683 N.E.2d 1280 (1997). Section 2-401(b) of the Code of Civil Procedure provides:

"Misnomer of a party is not a ground for dismissal but the name of any party may be corrected at any time, before or after judgment, on motion, upon any terms and proof that the court requires."

735 ILCS 5/2-401(b).

As the provision states, misnomer can be corrected at any time, even after the statute of limitations has run. *Thompson v. Ware*, 210 Ill. App. 3d 16, 154 Ill. Dec. 500, 568 N.E.2d 500 (1991).

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Misnomer must be distinguished from mistaken identity. Where misnomer occurs a plaintiff can simply correct the mistake pursuant to section 2-401. However, if mistaken identity occurs an amendment must meet the requirements of the relation back provision, section 2-616. *Estate of Henry v. Folk*, 285 Ill. App. 3d 262, 220 Ill. Dec. 831, 674 N.E.2d 102 (1996). See also *Zito*, 291 Ill. App. 3d at 391-392. The question of whether misnomer or mistaken identity is involved depends on the intent of the parties, including the plaintiff's subjective belief; however, a plaintiff's belief is not necessarily controlling. *Henry*, 285 Ill. App. 3d at 264.

In this matter, Petitioner filed an Application naming Kabini Trucking, Skyway, and the Injured Workers' Benefit Fund. No Amended Application was filed prior to the statute of limitations. Petitioner gave notice to Kabini Trucking at 1807 A Vermont, Elk Grove Village, Illinois, and to Skyway by their registered Agent Ewa Zawada, 3357 N. Harlem, Chicago, IL 60634.

During the relevant time frame of 2010 and 2011, Secretary of State records show the Magnolia address was the principal place of business of Kabini, Inc., and that Marek Budny was also the reported Director at that address. He was also its registered Agent at 3109 N. Bernard St., Chicago, IL.

During the relevant time from of 2010 and 2011, the registered Agent of Kabini Trucking was Malgorzata at 1807 A Vermont Drive, Elk Grove Village, Illinois.

The Notice of Application sent by the Commission to the 1807 A Vermont Drive address identified the caption, Petitioner, date of accident, and alleged Respondent. According to Mr. Myslek's testimony, there were zero employees of Kabini Trucking on that date. According to his testimony, the only person associated with that company was his wife, the alleged owner. However, he later became the dispatcher for that company. Because Kabini Trucking was purportedly not in operation, and because Mr. Myslek was an employee of Kabini, Inc., and married to the President of Kabini Trucking, it would be unreasonable to conclude that Kabini, Inc., was unaware that a claim had been filed by one of their employees against a similarly named employer with the same officers. I conclude Kabini, Inc., was aware of the Application by Petitioner.

Furthermore, had Petitioner mailed a copy of this Application to the Registered Agent of Kabini, Inc., it would have been mailed to the same residential address as the Agent of Kabini Trucking, Inc.

It is my opinion that this is a clear case of misnomer caused by Respondent/employers' similar names, and overlapping officers, addresses, and employees.

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Status of the Employers under Joint Employment or 1(a)(4) Employment

Kabini, Inc., Kabini Trucking, and Skyway, Inc., were nominally three different corporations, each separate from all others. The facts presented before the Commission, however, show that the three were deeply intertwined. There is some question as to whether Kabini Trucking was in operation in 2010, but no dispute that it was incorporated on March 5, 2009.

The DOT records and testimony indicate that Kabini, Inc., owned the truck. Skyway allegedly paid somewhere between three and ten employees. Kabini, Inc., or Kabini Trucking may have had their logo on the truck used on the date of accident. All three corporations had their officers accepting business mail at 1556 Magnolia Drive. All three corporations employed Mr. Myslek as their dispatcher. Kabini Inc., and Skyway used him to do their hiring and firing. Petitioner testified that he drove loads for both Kabini Trucking and Skyway. I would find that Kabini, Inc., supplied the truck, Kabini Trucking handled the logistics, and Skyway handled hiring and payroll. All three corporations benefited from the work of Petitioner, and this operation by either the Mysleks or the Mysleks and Mr. Budny was joint employment.

Skyway also meets the statutory definition of a loaning employer under 1(a)(4), and *Crespo v. Weber Stephen Products Co.*, 275 Ill. App. 3d 638, 656 N.E.2d 154, 212 Ill. Dec. 1 (1995). *Crespo* provides a two-prong test of employment under 1(a)(4), separately determining loaning employer and borrowing employer status.

The relevant section of the Act provides:

“An employer whose business or enterprise or a substantial part thereof consists of hiring, procuring or furnishing employees to or for other employers operating under and subject to the provisions of this Act for the performance of the work of such other employers and who pays such employees their salary or wages notwithstanding that they are doing the work of such other employers shall be deemed a loaning employer within the meaning and provisions of this Section.”

820 ILCS 305/§1(a)(4)

Mr. Myslek’s testimony was that Kabini, Inc., owned the physical tools, that it had control over Petitioner’s employment, that he had hiring and firing control for both corporations, and that Skyway “paid the employees (emphasis added)”. I would find that Skyway was a loaning employer under the statutory definition, furnishing employees and paying them on behalf of Kabini, Inc., or Kabini Trucking, Inc.

Weighing the four criteria suggested in *Prodanic v. Grossinger City Autocorp, Inc.*, 2012 IL App (1st) 110993, ¶ 16, 975 N.E.2d 658, I would find that Kabini, Inc., and Kabini Trucking

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were borrowing employers. Petitioner worked the hours of the borrowing employer; received instructions from Mr. Myslek; no supervisors are known; Mr. Myslek told Petitioner where and when his routes were to be picked up and where to deliver them; and control of the equipment was in the hands of Kabini, Inc., Kabini Trucking, or Mr. Myslek. Furthermore, consistent with *Barraza v. Tootsie Roll Indus.*, 294 Ill. App. 3d 539, 228 Ill. Dec. 853, 690 N.E.2d 612 (1997), Petitioner implicitly acquiesced to borrowed employment when he drove for the company he believed was Kabini Trucking while getting paid by Skyway. Based upon the weight of those facts, I believe Kabini, Inc., and Kabini Trucking were jointly borrowing employees.

CONCLUSION

For the above reasons, I would find that Petitioner was controlled and employed by Kabini, Inc., Kabini Trucking, and Skyway which were all joint employers of him due to their exchange of employees and officers. I would also find that Petitioner was loaned by Skyway to be borrowed by Kabini Trucking, Inc., and was employed under §1(a)(4) of the Act.

/s/ Amylee H. Simonovich
Amylee H. Simonovich

January 20, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC014527
Case Name	Glen J. Thomas v. Village of Roselle
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0009
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Erin Sievers
Respondent Attorney	Theodore Powers

DATE FILED: 1/20/2026

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Glen J. Thomas,

Petitioner,

vs.

No. 15 WC 14527

Village of Roselle,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Appellate Court. The sole issue on remand is overpayment of wage differential benefits. The Commission hereby complies with the Appellate Court's Order and directions.

The Appellate Court found:

"Claimant was unable to ever return to his firefighter duties after the accident on February 17, 2015. At the time of his retirement on April 30, 2022, claimant's hourly wage as a firefighter was \$32.55 (1.5 times his \$21.70 hourly rate as a public works employee). The Village claims, because claimant was not a full-time employee upon retirement, the multiplier did not apply and any wage-differential calculation should be based only on his \$21.70 public works employee hourly rate. The Village claims full-time employment is a condition precedent for applying the multiplier. The Village is partially correct. Indeed, claimant is entitled to wage-differential benefits. This is undisputed. The Village is correct that the multiplier does not apply upon claimant's retirement. However, the Village is incorrect that the calculation of benefits should be based on claimant's public works employee hourly rate. The calculation of wage-differential benefits should be based on claimant's hourly rate as a part-time firefighter/paramedic. It is claimant's earning capacity as a firefighter that was affected due to the accident. Applying claimant's public works employee hourly rate and the 1.5 multiplier to a

wage-differential calculation would not accurately reflect the reduced earning capacity of a retired full-time village employee who was prevented from ever working as a firefighter due to his work-related injury. In other words, after retiring, claimant is not missing out on his public works full-time position pay due to the accident. Instead, he is missing out on his hourly rate as a firefighter only.”

“[B]ecause claimant retired from his public works employment in April 2022, he is entitled to wage-differential benefits based only upon his firefighter hourly rate. That is, the calculation, based upon Exhibit IV (the 2022 Wage Schedule as it appears in the CBA), should be as follows: $\$19.15/\text{hour} \times 29.31 \text{ hours/week} = \$561.29 \times \frac{2}{3} = \$374.19$ per week. This calculation accurately reflects the loss of claimant’s earning capacity as a firefighter at the time of the hearing due to the February 2015 work-related accident, after consideration of claimant’s non-work related motorcycle accident and his retirement.”

The Appellate Court remanded the matter to the Commission “for the calculation of the overpayment of wage-differential benefits paid to claimant, given the calculation above.”

Only Respondent filed a brief on remand. Respondent’s argument extends the Appellate Court’s holding to the commencement of the award of wage differential benefits—September 22, 2016. Respondent thus claims an overpayment of wage differential benefits in the sum of \$48,324.23.

The Commission notes that during the arbitration hearing on August 26, 2022, Petitioner testified that on or about April 29, 2022, Respondent terminated his employment. However, Petitioner qualified for retirement and began receiving a pension as of May 1, 2022. The Appellate Court found that Petitioner retired on April 30, 2022. Regarding the scope of its ruling, the Appellate Court spoke that “[Respondent] is correct that the multiplier does not apply upon claimant’s retirement.” “After retiring, claimant is not missing out on his public works full-time position pay due to the accident. Instead, he is missing out on his hourly rate as a firefighter only.” *Only post-retirement wage differential benefits were at issue.*

Respondent’s Exhibit 1 shows the wage differential payments made to Petitioner remained unchanged after his retirement, at \$963.14 every two weeks.¹ The Commission calculates the overpayment of post-retirement wage differential benefits as follows: $\$374.19$ per week² for the 17 weeks from April 30, 2022 through August 26, 2022, Respondent should have paid \$6,361.25. Respondent paid \$963.14 every two weeks, corresponding to $\$68.80$ per day * 119 days³ = \$8,187.20. This results in an overpayment of \$1,825.95.

¹ Respondent’s Exhibit 1 and Petitioner’s Exhibit 11 show that shortly before the arbitration hearing, Respondent issued to Petitioner a check in the amount of \$11,329.53 for *underpayment* of wage differential benefits during various periods of time, mostly or all before retirement.

² The Appellate Court directed us to use \$19.15 for post-retirement firefighter hourly rate from April 30, 2022 through August 26, 2022. We believe the correct rate would be \$21.70 based upon Respondent’s Exhibit 2 and the Collective Bargaining Agreement at Tr. 417, 430 (FFII/EMT-B \$16.20 with +0.50 for FAE and +\$5 for longevity).

³ There are 119 days in 17 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that the overpayment of wage differential benefits from April 30, 2022 through August 26, 2022, is the sum of \$1,825.95.

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.

January 20, 2026

d-12/16/2025

SJM/sk

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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	15WC014527
Case Name	Glen J. Thomas v. Village of Roselle
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Rich Hannigan
Respondent Attorney	Daniel Arkin

DATE FILED: 11/15/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 15, 2022 4.44%

/s/ Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)

)SS.

COUNTY OF DuPage)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION**

Glen J. Thomas

Employee/Petitioner

Case # **15 WC 14527**

v.

Consolidated cases: **N/A****Village of Roselle**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 26, 2022**. 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 **calculation of 8(d)(1) benefits**

FINDINGS

On February 17, 2015, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$107,540.68**; the average weekly wage was **\$2,068.09**.

On the date of accident, Petitioner was **48** years of age, *single* with **3** 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 **\$90,850.45** in TTD benefits, **\$7,601.96** in TPD benefits, and **\$164,055.84** in wage differential benefits for a total credit of **\$262,508.25**.

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

ORDER

Respondent shall pay 8(d)(1) benefits at \$636.02 per week commencing **September 22, 2016**, and continuing until Petitioner turns 67, as set forth in the Conclusions of Law attached hereto;

Penalties are awarded in the amount of \$10,000.00 pursuant to Section 19(l) of the Act, as set forth in the Conclusions of Law attached hereto;

Respondent shall pay Petitioner compensation that has accrued from February 17, 2015 through August 26, 2022 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /s/ Frank J. Soto
Arbitrator

NOVEMBER 15, 2022

Procedural History

This case proceeded to trial on August 26, 2022. The parties stipulated that Glen J. Thomas (hereafter referred to as “Petitioner”) was employed in two separate capacities for the Village of Roselle (hereinafter referred to as “Respondent”). Petitioner was employed as a full-time public works employee and a par-time firefighter/paramedic. While performing his fighter job duties, Petitioner sustained a work injury, February 17, 2015, which prohibited Petitioner from ever returning to work as a firefighter but Petitioner was able to return to his full-time public works position. On February 17, 2017, Petitioner was involved in a non-work-related motorcycle accident resulting in his retirement on April 29, 2022. The parties further stipulate Petitioner is entitled to wage differential benefits involving the loss of his part-time firefighter position. (Arb. Ex. #1). The central issue in this case is the calculation of the wage differential rate.

Findings of Fact

On February 17, 2015, Petitioner was 48 years old and had been working for Respondent for 15 years as a firefighter and a water department employee. While fighting a fire Petitioner slipped on ice disconnecting hose lines and injured his right shoulder. Pursuant to the Collective Bargaining Agreement between Respondent and SEIU, Local 73 Part Time Firefighters (CBA), full time Village employees who also work part-time at the Fire Department shall receive 1.5 times their hourly rate for their Fire Department job classification. (PX6, p 17).

Petitioner treated with Dr. Drake at Core Orthopedics for his right shoulder. (PX1). On March 9, 2015, Dr. Drake performed a right rotator cuff repair and relocation of right bicep muscle. (PX1, p 52-53). Petitioner returned to work at the water department performing restricted work on May 11, 2015. Petitioner continued with physical therapy through October 13, 2015, when Dr. Drake ordered an FCE.

Petitioner saw Dr. Cole, pursuant to Section 12 of the Act, on November 16, 2015, who assessed residual pain/weakness of right shoulder status post partially irreparable rotator cuff tear right shoulder. Dr. Cole opined Petitioner could either proceed with an additional surgery and, if not, Petitioner could undergo an FCE to determine his physical abilities. Dr. Drake believed another surgery would be unlikely to improve Petitioner’s symptoms even with a good outcome. Dr. Drake opined Petitioner could not return to work as a firefighter. (PX1).

Petitioner underwent an FCE at Athletico on August 31, 2016. (PX4). Petitioner was found not to have the physical capabilities and tolerance to perform all the essential job functions of a firefighter but he could perform the essential job functions of water systems operator. (PX4). On September 13, 2016, Dr. Drake opined Petitioner reached MMI and issued permanent restrictions of consistent with the FCE. (PX1, p 166-169).

Petitioner returned to work in the water department on September 22, 2016. On September 28, 2021, Petitioner was injured in a motorcycle accident and sustained left proximal tibial and fibular fractures. On October 19, 2021, he had surgery for left bicondylar comminuted tibial plateau fracture, left comminuted fibular shaft fracture, left foot third metatarsal fracture, left foot fourth metatarsal fracture and left foot wound. He had open reduction and internal fixations of the fractures.

Petitioner was off work pursuant to FMLA which ended on December 22, 2021 which was extended to January 3, 2022. At that time, Petitioner was placed on extended medical leave and was paid his accrued sick and vacation time through April 29, 2022. On May 1, 2022, Petitioner's employment with Respondent was scheduled to be terminated on May 1, 2022 so Petitioner elected to take his pension effective April 29, 2022.

The Parties stipulated Petitioner's combined average weekly wage at the time of the accident was \$2,105.89, subject to the state maximum TTD rate of \$1,361.79. The parties have also stipulated Petitioner lost access to his job as a firefighter as a result of the February 17, 2015, accident and Petitioner is entitled to wage differential benefits. Originally, Respondent paid Petitioner \$481.57 in 8(d)(1) benefits beginning February 18, 2015. On August 23, 2022, Respondent paid Petitioner an underpayment of wage differential benefits totaling \$11,329.53 for the time period of February 17, 2015 through August 25, 2022, or 392 3/7 weeks, representing a \$28.87 per week underpayment. (PX 11).

The parties stipulated as a result of Petitioner's February 17, 2015, accident he was temporarily and totally disabled from his water department job from February 18, 2015 through May 10, 2015; working part time from May 11, 2015 through August 24, 2015 and temporarily and totally disabled from August 25, 2015 through September 21, 2016. Petitioner did not lose any additional time from his water department job after September 21, 2016, because of his February 17, 2015, accident.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in Support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706 (1992).

With Respect to Issue “L” the nature and extent of Petitioner’s Injury the Arbitrator finds as follows:

The parties stipulate that Petitioner is entitled to wage differential benefits involving the loss of his part-time firefighter position but the parties disagree regarding the calculation of those benefits.

Petitioner’s rate varied from year to year based upon the Collective Bargaining Agreement (hereafter referred to as “CBA”). Article XII of the Collective Bargaining Agreement (hereinafter referred to as “CBA”) states that “*Full-time Village employees who also work part-time at the Fire Department shall receive 1 ½ times the hourly rate for their Fire Department job classification*”. (PX 6, p. 17). At the time of his retirement on April 30, 2022, Petitioner’s hourly rate of pay as a public works employee was \$21.70 and his hourly rate of pay as a firefighter/paramedic was \$32.55. (Rx. 2). The parties stipulated Petitioner averaged 29.31 hours per week while working as a part time firefighter prior to his accident of February 17, 2015. (Arb. Ex. 1).

Respondent argues since Petitioner’s employment with Respondent terminated on April 29, 2022 the calculation of the wage differential benefits should be based upon his public works hourly rate, not the 1 ½ times the public works hourly rate provided in Article XII of the CBA. Respondent argues being a fulltime employee for Respondent is a condition precedent to using the 1.5 multiplier for calculating the firefighter rate of pay. Respondent believes the wage differential benefits should be \$424.02 per week. (*i.e.* Petitioner’s public works base pay of \$21.70 multiplied by the average hours Petitioner worked as a part-time firefighter of 29.31 multiplied by 2/3 (or) $\$21.70 \times 29.31 = 636.03 \times 2/3 = \$424.02$).

The Arbitrator notes the CBA does not state being a fulltime employment with Respondent is a condition precedent to using the 1.5 multiplier when calculating Illinois Workers’ Compensation wage differential benefits. The Arbitrator finds the 1.5 multiplier was intended to determine the hourly rate of pay Petitioner was to receive while performing his firefighter duties similar to the 1.5 multiplier used when calculating the hourly rate of pay Petitioner would receive for working

overtime. Under Section 6.6 of the CBA, Petitioner would be paid the overtime hourly rate of 1 ½ times his regular straight-time hourly rate for hours worked in excess of 212 in a 28-day work cycle. (PX 6. P. 11).

Petitioner argues the wage differential benefits should be based upon Petitioner's rate of pay as a firefighter per Article XII of the CBA. Petitioner believes he is entitled to wage differential benefits of \$636.03 per week based upon Petitioner's firefighter rate of \$32.55 as of April 29, 2022, Petitioner's last date of employment.¹ (*i.e.*, Petitioner's firefighter hourly rate of pay of \$32.55 multiplied by the average hours Petitioner worked as a part-time firefighter of 29.31 multiplied by 2/3 (or) $\$32.55 \times 29.31 = 954.04 \times 2/3 = \$636.03$).

Section 8(d)(1) of the Act states: If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. For accidental injuries that occur on or after September 1, 2011, an award for wage differential under this subsection shall be effective only until the employee reaches the age of 67 or 5 years from the date the award becomes final, whichever is later.

The object of Section 8(d)(1) is to compensate an injured claimant for his reduced earning capacity. *Smith*, 308 Ill.App3d at 265-66, 421 Ill.Dec 468, 719 N.E.2d 329. To qualify for a wage differential award under section 8(d)(1), a claimant must prove: (1) a partial incapacity which prevents him from pursuing his "usual and customary line of employment," and (2) an impairment of his earnings. To establish a diminished earning capacity, a claimant must prove his actual earnings for a substantial period before and after he returns to work, or what he is able to earn in some suitable employment if he cannot return to work. *Smith*, 308 Ill.App.3d at 266,241 Ill.Dec. 468, 719 N.E.2d 329.

¹ As of April 29, 2022, Petitioner's part-time firefighter rate of pay was \$32.55 per hour or 1 ½ times his public work hourly rate of pay of \$21.70. (RX 2).

The Arbitrator finds Petitioner proved both elements of his claim for wage differential benefits noting the party's stipulation. The Arbitrator further finds the wage differential benefits should be determined using Petitioner's firefighter hourly rate of pay of \$32.55, not upon his public work hourly rate of pay. Petitioner was unable to return to his parttime firefighter position. Petitioner was paid his firefighter hourly rate while working in that capacity.

The Arbitrator finds using the weekly firefighter hourly rate is consistent with the object of Section 8(d)(1) which is to compensate an injured claimant for his reduced earning capacity. To find otherwise would not make the claimant whole and frustrate the fundamental remedial purpose of the Act. See *Contreras v. Industrial Comm'n*, 306 Ill. App. 3d 1071, 1076 (1999). The Act is meant to compensate a claimant for economic disabilities that diminish his value in the labor market, not for physical disabilities *per se*. See, e.g. *World Color Press v. Industrial Comm'n*, 249 Ill. App. 3d 105, 109-10 (1993) ("The underlying purpose of the Act is to provide financial protection for workers whose earning power is interrupted or terminated as a consequence of injuries arising out of and in the course of their employment." (Internal quotations marks omitted.)).

The Court addressed a similar issue regarding intervening injuries in *Chada v Ill. Workers' Comp. Comm'n*, 58 N.E.3d 848, 405 Ill.Dec 587 (Ill. App. 2016). In *Chada*, the claimant received wage differential benefits after injuring his low back and returning to work in a lower paid position due to work restrictions. Thereafter, Petitioner injured his cervical spine. In *Chada*, the Commission determined that the claimant's entitlement to wage differential benefits ended on the date the claimant began missing work as a result of his subsequent cervical injury. The Appellate Court disagreed finding the claimant's subsequent unrelated and more disabling work injury to the neck did not alter the fact that his low back injury reduced his earning capacity. The Appellate Court held once the claimant established an entitlement to wage differential benefits as a result of the prior injury, he was entitled to collect such benefits "for the duration of his disability" and the disability (*i.e.* the reduced earning capacity) the claimant suffered was the result of the prior injury which did not end merely because the claimant suffered a second more disabling work injury. The Appellate Court further held the claimant's entitlement to wage differential benefits would end if, and only if, he later became able to earn the salary he formerly earned in his prior position. *Id.*

To calculate 8(d)(1) benefits, the difference between the average amount which *he would be able to earn* in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. (820 ILCS 305/8(d)(1), *emphasis added*).

The parties stipulated that Petitioner's average hours worked as a firefighter was 29.31 per week and his hourly rate as a part time firefighter and full-time employee of the water department was \$32.55, on his last date of employment, yielding an average weekly wage of \$954.03. As such, Petitioner is entitled 8(d)(1) benefits of \$636.03 per week commencing September 22, 2016 and continuing until Petitioner turns 67. (*i.e.*, Petitioner's firefighter hourly rate of pay of \$32.55 multiplied by the average hours Petitioner worked as a part-time firefighter of 29.31 multiplied by 2/3 (or) $\$32.55 \times 29.31 = 954.04 \times 2/3 = \$636.03$).

With regards to Issue "M", Penalties the Arbitrator finds as follows:

Petitioner seeks penalties pursuant to Sections 19(k), 19(l) and 16 of the Act. Respondent underpaid Petitioner for years using an average weekly wage calculation based solely on Petitioner's public works hourly rate of pay and not using firefighter's hourly rate of 1 ½ times Petitioner's public works hourly rate of pay as provided in Article XII of the CBA. On August 23, 2022, Respondent issued a check for underpaid wage differential benefits totaling \$11,329.53 for the time period of February 17, 2015 through August 25, 2022. (PX 11). Penalties under section 19(l) are in the nature of a late fee. The award of section 19(l) penalties is mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. Where there is a delay in paying compensation, it is the employer's burden to show it had a reasonable belief the delay was justified. Respondent offers no objectively reasonable explanation as to why they underpaid benefits until the eve of trial. As such, the Arbitrator awards penalties in the maximum amount of \$10,000.00 pursuant to Section 19(l) of the Act.

Petitioner also seeks penalties pursuant to Sections 19(k) and 16 of the Act claiming the underpayment was in bad faith or for improper purpose and/or was based upon an unreasonable or vexatious delay. 820 ILCS 305/19(k) penalties demand a higher standard of misconduct, an "unreasonable or vexatious" delay or an "intentional underpayment of compensation." *Id.* Penalties and attorney fees under sections 19(k) and 16 require more than an "unreasonable delay" in payment of benefits. Penalties and attorney fees under sections 19(k) and 16 are

intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. Penalties are “intended to address the situation where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose.” *McMahan v. IC*, 183 Ill.2d 499, 515 (1998). The Arbitrator finds the Petitioner failed to prove that Respondent’s conduct was unreasonable, vexatious, bad faith or an improper purpose. As such the claim for penalties under sections 19(k) and 16 is hereby denied.

By: /s/ Frank J. Soto
Arbitrator

November 12, 2022
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013578
Case Name	Steve Homan v. UPS
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0010
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Brent Neumeyer

DATE FILED: 1/21/2026

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF ADAMS)

☒ 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

STEVE HOMAN,
 Petitioner,

vs.

NO: 23 WC 013578

UPS,
 Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 27, 2025 is hereby affirmed and adopted.

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

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

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.

January 21, 2026

O: 01/13/26

AHS/ma

051

/s/ Amylee H. Simonovich
 Amylee H. Simonovich

/s/ Stephen J. Mathis
 Stephen J. Mathis

/s/ Kathryn A. Doerries
 Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013578
Case Name	Steve Homan v. UPS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Brent Neumeyer

DATE FILED: 3/27/2025

/s/ Edward Lee, Arbitrator

Signature**INTEREST RATE WEEK OF MARCH 25 2025 4.09%**

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

☐	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**

Steven Homan

Employee/Petitioner

v.

UPS / United Parcel Service

Employer/Respondent

Case # **23** WC **013578**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Quincy**, 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

FINDINGS

On **02/15/2023**, Respondent was operating under and subject to the provisions of the Act.

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

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$27,430.46**; the average weekly wage was **\$596.31**.

On the date of accident, Petitioner was **49** years of age, single with **0** dependent children.

Petitioner has received all reasonable and necessary medical services.

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

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

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

ORDER

Petitioner failed to prove that he suffered an accident on February 15, 2023 which arose out of and in the course of his employment by Respondent.

Petitioner's conditions of adjustment disorder with anxious features (panic attacks) are not causally related to the accident of February 15, 2023.

Based upon the findings in regard to accident and causal connection, all other issues are deemed moot.

Claim for compensation is therefore denied.

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

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

Edward Lee
Signature of Arbitrator

MARCH 27 2025

STATE OF ILLINOIS)
) SS
COUNTY OF ADAMS)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

STEVEN HOMAN,
Employee/Petitioner,

Case # 23 WC 013578

v.

UPS / UNITED PARCEL SERVICE,
Employer/Respondent.

FINDINGS OF FACT

Petitioner filed an Application for Adjustment of Claim alleging mental/psychological injuries arising out of and in the course of his employment with Respondent on February 15, 2023.

The issues to be resolved in Case # 23 WC 013578 by this Hearing are whether Petitioner had an accident that arose out of and in the course of employment; whether Petitioner's current condition of ill-being is causally related to the accident; what were Petitioner's earnings; whether the medical services that were provided to Petitioner reasonable and necessary; whether Respondent paid all appropriate charges for reasonable and necessary medical services; whether temporary benefits are owed; and what is the nature and extent of the injury.

Petitioner is fifty-one years old and has been employed by Respondent for 28 years. He has worked as a preloader/driver for the last 25 years. Petitioner unloads packages, scans packages, and drives if needed.

Petitioner previously owned The Barn, a bar in Quincy, Illinois. In 2021, Jazzpher Evans, an African American student at Quincy University, alleged Mr. Homan attacked her at the bar. Petitioner was accused of placing Ms. Evans in a chokehold and dragging her out of the bar. Petitioner was not initially charged by the police, and protests were held in Quincy, Illinois. Petitioner was eventually charged with assault.

Petitioner testified people in the community accused him of being racist. Rallies were held outside Petitioner's business, The Barn. Petitioner's counselor, Mr. Paul Warning, a resident of Quincy, Illinois, testified he had heard of the incident in 2021. Petitioner's case attracted national media attention.

Petitioner testified the negative attention was a bad experience for him, causing him to end a relationship with his girlfriend because he did not want her to be affected by the notoriety he was experiencing. (Petitioner's Exhibit 4, hereinafter "PX 4"). Petitioner no longer owns the bar.

On April 15, 2021, a resident of Quincy, Illinois, Anngelina Chasteen, posted comments on Facebook about Petitioner and Ms. Evans. (PX 10). In the social media post, Ms. Chasteen discussed Petitioner's alleged assault on Ms. Evans, and commented on her own experiences at Petitioner's bar. The post discussed Ms. Chasteen's opinions on the media coverage of Petitioner's case and issues with the culture in Quincy, Illinois. Other individuals commented on the social media post, and discussed an upcoming protest scheduled for April 17, 2021. (PX 10). Petitioner testified he did not know Ms. Chasteen at the time her post was made on social media in April 2021, and she did not work for Respondent at that time.

Ms. Chasteen later became employed at Respondent. In 2022, she became one of Petitioner's two supervisors. Petitioner testified he and Ms. Chasteen got along "fine" when she became his supervisor. Ms. Chasteen continued working in this capacity leading up to and through the alleged accident date of February 15, 2023.

On February 13, 2023, Petitioner first became aware of the social media post by Ms. Chasteen of April 2021. The next day, February 14, 2023, Petitioner testified he did not go into work, but he did file a grievance against Ms. Chasteen (PX 5). Ryne Bushong, business

manager for Respondent's center in Quincy, Illinois, testified nothing came of the grievances Petitioner filed against Ms. Chasteen other than a disposition that both parties would treat each other with dignity and respect.

On February 15, 2023, the alleged accident date, Petitioner went to work and testified that when he saw Ms. Chasteen, he felt out of breath, and his heart started racing. He testified he felt nervous, and had to step away from his job and went to the restroom for 15 minutes. Petitioner testified he reported his symptoms to his other supervisor, Janice Schuler.

Petitioner finished his shift that day and went to his primary care physician, Dr. Moore at Quincy Medical Group. Petitioner reported to Dr. Moore he was worried because his supervisor had "judged him before she even knew how he was," and that he was having a significant amount of anxiety. (PX 2). Dr. Moore noted his symptoms resolved as soon as he was "pulled out of that situation," but Petitioner was worried about continued problems and symptoms with panic attacks. (PX 2). Dr. Moore recommended medication as needed if he develops panic attacks, and suggested Petitioner "see if they can make a change to his direct supervisor." (PX 2). Dr. Moore did not place Petitioner on any restrictions. (PX 2).

Petitioner returned to Dr. Moore on February 21, 2023. (PX 2). Dr. Moore noted Petitioner was having significant anxiety because of the social medial issue, which he noted "had nothing to do with a work situation," but rather was a "personal situation." (PX 2). Dr. Moore noted Petitioner was having panic attacks at work, and adjusted his medication. Dr. Moore noted at this visit, less than a week since he first saw the Petitioner for panic attacks, that this may be "a chronic problem for the patient." (PX 2). Dr. Moore did not place Petitioner on any restrictions. (PX 2).

By March 2023, Petitioner was on a restriction from another physician having to do with an unrelated issue with his foot. (PX 2). On March 22, 2023, Dr. Moore placed Petitioner on a restriction of being "able to walk away from situation when having panic attacks." (PX 2).

Petitioner's diary entry from April 7, 2023 indicates he went in to work and was told he was not working when scheduled to work, and was asked to leave. (PX 6). His diary entry

from April 9, 2023 states he flew to Florida and had no panic attacks, and came home on April 16, 2023. (PX 6). On April 17, 2023, the diary states he did not work because he had an appointment for chest pains while having panic attacks. (PX 6).

On April 17, 2023, Petitioner was seen by Dr. Derian, who noted panic attacks with chest pressure and palpitations. (PX 2). Dr. Derian noted a history of hypertension and severe sleep apnea, and that Petitioner had not been using his CPAP regularly. Petitioner was seen by Dr. Derian two years ago at which time he had an EKG and Dr. Derian ordered an echocardiogram. Dr. Derian noted Petitioner presented on April 17, 2023 to have the echocardiogram, and was found to be in atrial fibrillation. Petitioner then went back into sinus rhythm while with Dr. Derian. (PX 2). Dr. Derian diagnosed paroxysmal atrial fibrillations (HCC), palpitations, and hypertension, and ordered a Holter monitor and echocardiogram to reassess left ventricular cardiac function. (PX 2). He recommended Petitioner avoid caffeine and advised him to be complaint with his CPAP. Petitioner had the recommended echocardiogram and stress test for his heart palpitations on June 6, 2023, and the tests were negative. (PX 2).

On April 19, 2023, Dr. Moore saw Petitioner again and noted he was still having symptoms. (PX 2). Dr. Moore believed it was time to proceed with an evaluation with a specialist. Dr. Moore noted the supervisor was still in close contact with Petitioner and would sometimes sit and watch him work, causing Petitioner significant anxiety at work. Dr. Moore did not place him on any restrictions per his "Work Ability Report" of April 19, 2023. (PX 2).

Petitioner testified that in February through April 2023, Petitioner was consistently having panic attacks at work whenever Ms. Chasteen would come around him or he would notice her at work. He did not have symptoms when she was not around him at work. Petitioner's diary entries from this time indicate he would have panic attacks when he would see Ms. Chasteen watching him or staring at him. (PX 6).

Ryne Bushong, business manager at Respondent, testified he manages Respondent's center in Quincy, Illinois, and was Ms. Chasteen's supervisor. He testified that both Petitioner and Ms. Chasteen worked part-time. Ms. Chasteen was a part-time supervisor, and her job involved supervising employees to make sure they were working safely, and conducting

safety observations of employees. He testified Ms. Chasteen's job required her to move to different areas of the center and to observe employees working to make sure they were working safe, based on Respondent's key safety methods. Mr. Bushong's job, in part, was to observe the supervisors, and he testified he observed Ms. Chasteen. Mr. Bushong testified he never observed Ms. Chasteen harassing Petitioner.

Dr. Moore referred Petitioner to Paul Warning, a clinical therapist at Quincy Medical Group (PX 2; PX 4). Petitioner would go on to see Mr. Warning three times. At the initial visit on May 9, 2023, Mr. Warning noted Petitioner had several stressors over the past two years. (PX 2). First, Mr. Warning described how Petitioner was accused of assault in April 2021, noting as well that Petitioner was accused of being racist, and that he left his business. (PX 2). Mr. Warning testified he assumed Petitioner was being accused of being racist by a lot of people. (PX 4 at 30). Mr. Warning testified this led to a breakup between Petitioner and his girlfriend due to the attention and notoriety he was receiving. (PX 2; PX 4 at 30). Mr. Warning testified he believed going through this situation with the notoriety in the community would cause some anxiety. (PX 4 at 39).

Mr. Warning notes in his report that sometime after the incident, a woman made several statements about Petitioner on social media, and then eventually she became his supervisor at work. Mr. Warning references in his report the woman posted his personal information on social media, but testified he never saw the social media post. (PX 2; PX 4 at 32).

Mr. Warning noted Petitioner had no prior mental health treatment. (PX 4 at 17). Mr. Warning testified he did not do any formal mental health exam or assessment when he met with Petitioner, but rather reviewed his symptoms in an interview format. (PX 4 at 18). He testified there were particular types of therapy for panic disorder called interoceptive exposure, but since Petitioner's panic attacks only arose at work in the presence of this particular supervisor, this was not appropriate therapy for Petitioner. (PX 4 at 20).

Mr. Warning diagnosed Petitioner with an adjustment disorder with anxious features. (PX 4 at 18). He noted Petitioner described feeling very flushed, heart beating very fast, breathing very heavy, a strong feeling of flight, and a need to leave the situation. (PX 4 at 18).

Mr. Warning testified he did not know when Petitioner's panic attacks began, or when Ms. Chasteen became his supervisor. (PX 4 at 33). He testified he did not take Petitioner off of work at any time, and he did not know why he was off of work before he saw him, but assumed it was his mental health situation, but ultimately did not know. (PX 4 at 34-35). Mr. Warning testified he did not feel he had the authority or capacity to alter any work restrictions, and deferred to Dr. Moore. (PX 4 at 20).

Petitioner saw Mr. Warning again on May 16, 2023. (PX 2; PX 4). Mr. Warning testified he did not do the typical treatment that he would do for panic disorder because Petitioner did not meet the criteria for that treatment. (PX 4 at 37). Mr. Warning did psycho education and supportive therapy, trying to help Petitioner understand what was going on when he had a panic attack, and give him an opportunity to talk about the things that were stressing him out. (PX 4 at 22).

On June 22, 2023, Petitioner was seen again by Dr. Moore. Dr. Moore noted Petitioner was to work as tolerated, based on anxiety, until his work environment changes. (PX 2).

Petitioner saw Mr. Warning for the last time on July 21, 2023. (PX 2; PX 4 at 22). Mr. Warning testified Petitioner was doing better at this time. Mr. Warning Petitioner was "in a pretty good mood and smiling," was involved with friends, and was "mentally healthy." (PX 4 at 36-37). Mr. Warning noted Petitioner saw Ms. Chasteen twice, and had a similar panic response each time that he was there with her, but if she was not present, he felt good about showing up to work to clock in. (PX 4 at 23).

Mr. Warning was asked whether Petitioner's symptoms and diagnosis were "at all caused, aggravated, or accelerated by these incidents that he described with the supervisor at UPS." (PX 4 at 25). Mr. Warning testified, "All I can say is that he did not have panic attacks prior to this person entering his life, and he described not ever having panic attacks when he was around anybody else, and when he was around this particular supervisor, he would have panic attacks." (PX 4 at 26). He testified that "it clearly indicates that it would happen in her presence and so it was related to her in some way, at least in terms of his perception." (PX 4 at 26).

On August 16, 2023, Dr. Moore noted Petitioner and his supervisor were now working different schedules so there were no overlapping periods of time. (PX 2). Dr. Moore noted Petitioner could work at different hours than the individual “that is causing anxiety and panic attacks.” (PX 2). Petitioner worked on August 17, 2023. (Respondent’s Exhibit 3, hereinafter “RX 3”).

Petitioner recorded in his diary on September 4, 2023 that he went back to work because the supervisor “that was causing my panic attacks quit UPS. So I returned to work.” (PX 6). On September 9, 2023 a note from Dr. Moore indicates Petitioner can “return to work without restrictions as long as there remains no contact with prior supervisor.” (PX 2). Payroll records of Respondent indicate Petitioner returned to work September 12, 2023. (RX 3).

Ryne Bushong testified that while Ms. Chasteen was employed at Respondent, she never complained to him about Petitioner. He testified she never attempted to have him written-up for job performance, and never tried to do anything to get him fired. Mr. Bushong testified that between February 2023 and September 2023, Petitioner was never written-up at work, nor was he ever disciplined in any way by his employer. Petitioner was never told at anytime that his job was in jeopardy.

Petitioner testified he is currently doing well, with no panic attacks or issues with anxiety.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner failed to prove his anxiety and panic attacks arose out of and in the course of his employment at Respondent.

Under the Illinois Workers’ Compensation Act, in order for a claimant to be entitled to workers’ compensation benefits, the injury must arise out of and in the course of the claimant’s employment. 820 ILCS 305/1(d). A compensable injury occurs ‘in the course of

employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 371 Ill.Dec. 384, 390, 990 N.E.2d 284, 290 (Ill.App. 4th Dist. 2013).

“Arising out of” the employment refers to the origin or cause of the claimant’s injury. Id. An accident “arises out of” one’s employment “if its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. Typically, an injury arises out of one’s employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties.” Id.

Here, Petitioner did not have an accident that arose out of and in the course of his employment. On February 13, 2023, Petitioner became aware of comments made nearly two years prior in April 2021, on social media by Angelinna Chasteen. At the time the comments were made, Petitioner did not know Ms. Chasteen, and Ms. Chasteen did not work at Respondent. Petitioner alleges that once he became aware of these statements, nearly two years later, it caused him anxiety and panic attacks because Ms. Chasteen had since become his supervisor at Respondent, and he feared for his job.

Ms. Chasteen’s statements on social media about Petitioner that caused him anxiety and panic attacks in 2023 were made outside of work, and well prior to Ms. Chasteen’s employment at Respondent. Petitioner did not testify as to how he became aware of the statements in 2023 once Ms. Chasteen did begin working at Respondent. However, Petitioner testified that at no time did Ms. Chasteen discuss these comments on social media or bring up Petitioner’s criminal case with him during work. Ryne Bushong testified Ms. Chasteen never attempted to discipline, ask for him to be written-up, or otherwise put his job at risk while at work either.

The personal opinions and comments Ms. Chasteen expressed on social media in 2021 were in relation to a newsworthy event in her community, and had nothing to do with Petitioner’s employment at Respondent. Others in the community were protesting and

commenting on social media about Petitioner's criminal case. His case received national media attention. Petitioner becoming aware of Ms. Chasteen's comments in 2023 and having anxiety and panic attacks over the comments does not change the fact that the comments were not made at work while Petitioner was performing activities in conjunction with his employment. Respondent had no employment relationship with Ms. Chasteen at the time the comments were made, and there is no connection between her comments on social media about Petitioner and Petitioner's employment at Respondent.

Therefore, the Arbitrator finds Petitioner has failed to prove his injury arose out of and in the course of his employment.

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

The Illinois Supreme Court has held that psychological injuries can be compensable under either of two ways: (1) where the psychological injuries were caused by a physical trauma (physical-mental) or (2) where the psychological injuries were caused by a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm though no physical trauma or injury was sustained." (mental-mental trauma). *Pathfinder v. Industrial Comm'n*, 62 Ill.2d 556, 563, 343 N.E.2d 913, 917 (1976). Because employment conditions "in themselves may produce stress, the mental-mental theory of recovery is generally recognized as a more difficult basis for claimant to prove that his or her psychological injury is compensable." *Skidis v. Industrial Comm'n*, 309 Ill.App.3d 720, 721, 722 N.E.2d 1163, 1165 (Ill.App. 5th Dist. 1999).

Recovery for mental-mental psychiatric injuries is limited to those who can establish that: (1) the mental disorder arose in a situation of greater dimension than the day-to-day emotional strain and tension all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the 'major contributory cause' of the mental disorder." *Anderson v. Industrial Comm'n*, 321 Ill.App.3d 463, 469, 748 N.E.2d 339, 333-334 (Ill.App.5th Dist. 2001).

The Arbitrator finds Petitioner has not established that the psychological injuries were caused by a sudden, severe emotional shock traceable to a definite time, place and cause. The Arbitrator finds Petitioner has not established that the conditions exist in reality, from an objective standpoint, nor that the employment conditions, when compared with the non-employment conditions, were the major contributory cause of the mental disorder.

Petitioner relies on the testimony of counselor Paul Warning to establish causation. Mr. Warning diagnosed Petitioner with adjustment disorder with anxious features. (PX 4 at 18). Mr. Warning is not a psychiatrist, psychologist, nor does he have a medical degree. (PX 4 at 27). Mr. Warning was asked if Petitioner's symptoms and the conditions he diagnosed were at all caused, aggravated, or accelerated by incidents he described with his supervisor at Respondent. Mr. Warning testified, "All I can say is that he did not have panic attacks prior to this person entering his life, and he described not ever having panic attacks when he was around anybody else, and when he was around this particular supervisor, he would have panic attacks." (PX 4 at 25-26). Mr. Warning testified he believed this created "a link between those and these interactions or incidents with her." (PX 4 at 26).

Mr. Warning's testimony is not found persuasive. Mr. Warning testified he had "no understanding" of the causation standard for psychiatric injury in Illinois workers' compensation. (PX 4 at 39). Mr. Warning noted Petitioner did not meet the criteria for typical treatment for panic disorder. (PX 4 at 37). Mr. Warning testified he had not seen the social media post made by Ms. Chasteen in 2021 at issue in this case himself. (PX 4 at 32). Mr. Warning did not know when Petitioner's panic attacks began, nor when Ms. Chasteen became Petitioner's supervisor. (PX 4 at 33-34). Mr. Warning did not do any formal mental health exam or assessment when he met with Petitioner. (PX 4 at 18).

Petitioner has not demonstrated that he sustained a psychological injury while working at Respondent on February 15, 2023, as he has not established that reading Ms. Chasteen's comments made on social media in April 2021 caused a sudden, severe emotional shock traceable to a definite time, place, which caused psychological injury. *Pathfinder v. Industrial Comm'n*, 62 Ill.2d 556 at 563. On the contrary, many people in the community were making similar comments as Ms. Chasteen in 2021, and there were protests in the

community and national media attention over Petitioner's criminal case. Petitioner testified he was aware of the protests and national media attention. Petitioner's knowledge in 2023 that Ms. Chasteen made these comments in 2021, before she worked at Respondent, would not have caused a sudden, severe emotional shock traceable to a definite time. As Mr. Warning noted, Petitioner going through this situation in 2021 with the notoriety in the community would be expected to cause anxiety. (PX 4 at 39).

Petitioner has not demonstrated that the conditions for his alleged mental injury exist in reality, from an objective standpoint. See *Runion v. Industrial Comm'n*, 245 Ill.App.3d 470, 473, 615 N.E.2d (Ill.App.5th Dist. 1993). Petitioner alleges that once he became aware of these statements nearly two years later, it caused him anxiety and panic attacks because Ms. Chasteen had since become his supervisor at Respondent, and he feared his job may be in jeopardy.

It is readily apparent from the testimony in this case those fears were unfounded and were not based on conditions that exist in reality: Petitioner was never disciplined or otherwise written up at work by Ms. Chasteen or anyone else at Respondent. Ms. Chasteen never discussed with Petitioner the social media post or Petitioner's underlying criminal case that was the subject of her comments on social media back in 2021. There is no evidence she ever discussed it with anyone else at Respondent either. There is no credible evidence Ms. Chasteen or anyone else at Respondent harassed Petitioner.

Petitioner failed to establish that the employment conditions, when compared with the non-employment conditions, were the 'major contributory cause' of the mental disorder. *Anderson*, 321 Ill.App. at 469. When the comments were made by Ms. Chasteen in 2021, there were no employment conditions: Ms. Chasteen was not an employee of Respondent at the time. Respondent cannot be held responsible for comments on newsworthy events by people who are not employees of Respondent. Mr. Warning testified that as a resident of Quincy, Illinois himself in 2021, he had heard of Petitioner's criminal case. (PX 4 at 29). Mr. Warning testified there were several people, including the person who he allegedly assaulted, as well as people on social media accusing Petitioner of being racist. (PX 4 at 29). Mr. Warning testified he assumed a lot of people were accusing Petitioner of being racist in conjunction

with his criminal case is in 2021, and noted it led to the breakup with his girlfriend because of the attention he was experiencing. (PX 4 at 30).

Therefore, the Arbitrator finds Petitioner has not established that his current condition of ill-being is causally related to the injury or his employment at Respondent.

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

Given the Arbitrator's findings of no accident and no causal relationship, all other issues are rendered moot.

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

Given the Arbitrator's findings of no accident and no causal relationship, all other issues are rendered moot.

Issue (K): What temporary benefits are in dispute?

Given the Arbitrator's findings of no accident and no causal relationship, all other issues are rendered moot.

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

Given the Arbitrator's findings of no accident and no causal relationship, all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002013
Case Name	Jason Altheide v. Aldi
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0011
Number of Pages of Decision	16
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jack Linn
Respondent Attorney	William A Lowry Sr

DATE FILED: 1/21/2026

/s/Stephen Mathis, Commissioner

Signature

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Page 1

STATE OF ILLINOIS

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) SS.

COUNTY OF LAKE

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Altheide,

Petitioner,

vs.

No. 24 WC 02013

Aldi,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary disability, and being advised of the facts and law, reverses the Decision of the Arbitrator and denies Petitioner's claim for the reasons stated below.

Petitioner's application for adjustment of claim alleges that on October 19, 2023, Petitioner injured his bilateral hands and wrists "while working." The Arbitrator found the claim compensable. We disagree.

Petitioner began working for Respondent on October 10, 2023. Petitioner testified to performing a lot of repetitive gripping, twisting, and lifting and that he drove a twisting throttle pallet truck for about 10 to 12 hours a day. Petitioner testified his symptoms had gotten worse on October 19, 2023 when he started waking up at night with his hands on fire and his fingers numb. Petitioner reported notifying Respondent of his condition and completed an accident report. The Employee Statement, completed by Petitioner, listed the date of incident as October 19, 2023 and reported occasional numbness in this fingers and both hands having "To Grip The Case".

Petitioner presented to Physicians Immediate Care, on October 23, 2023, with chief complaint of numbness/tingling of the left fingers, right forearm and right fingers since Monday, October 16, 2023. Petitioner also reported a pinching sensation from his right elbow to his hand since the prior Wednesday [October 18, 2023] and that he was experiencing numbness in all of his fingers. Petitioner indicated he used a pallet jack in a freezer that does require some force to turn the throttle. Petitioner reported he was more concerned about his right arm because of a pinching sensation from a mass on his

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right elbow that he hasn't been able to treat. Petitioner denied any injury to his hands. Petitioner indicated his symptoms were not the result of any injury but that his symptoms started 1 week after starting working for his employer. Petitioner further reported the lipoma on the middle of his right elbow was growing and that he previously worked construction and used various tools. Dr. Vilbar, of Physicians Immediate Care, determined the lipoma on the right elbow was causing Petitioner's symptoms.

On November 9, 2023, Petitioner presented to Dr. Minhas at Vox Valley reporting bilateral hand pain with associated numbness after a work-related incident on October 18, 2023. Petitioner further reported that towards the end of the day on October 18, 2023, he began to experience pain, numbness and tingling in both hands, particularly on the right side. Regarding the cause of his symptoms, Petitioner reported that he picks produce and builds pallets. Dr. Minhas diagnosed bilateral carpal tunnel syndrome as a result of a work-related incident on October 18, 2023. Petitioner followed up with Dr. Minhas on February 16, 2024, reporting that his symptoms were getting worse and were particularly bad when stocking the freezer at work. Dr. Minhas recommended surgery.

On March 4, 2024, Petitioner was examined by Dr. Mark Cohen pursuant to Section 12 of the Act. At that visit, Petitioner reported his symptoms began after approximately one week of working as a product selector. Petitioner indicated that he first noticed a burning sensation at night. Petitioner denied any injury at work. Petitioner also denied that his symptoms initially occurred during work activities. Dr. Cohen reviewed Petitioner's medical records and agreed with the diagnosis of bilateral carpal tunnel syndrome, right greater than the left. Dr. Cohen opined there was no evidence to suggest Petitioner's carpal tunnel syndrome was directly related to his work activities which he began on October 10, 2023. Dr. Cohen indicated carpal tunnel is a chronic compressive neuropathy involving the median nerve at the wrist and palm, which is idiopathic in the vast majority of cases, but can be associated with certain occupational activities specifically involving forceful and repetitive grasping and squeezing against resistance throughout the work day and heavier vibratory tools have also been implicated as well. Dr. Cohen opined there was insufficient exposure to directly associate Petitioner's carpal tunnel syndrome to his new job duties and there was no evidence suggesting his carpal tunnel syndrome was directly related to his work activities beginning on October 10, 2023.

Petitioner returned to Dr. Minhas on February 21, 2024. At that time Dr. Minhas indicated Petitioner was a 34-year-old right-handed male who presents with bilateral hand pain exacerbated at work on October 18, 2023 consistent with bilateral carpal tunnel syndrome, greater on the right. At that time, Dr. Minhas reviewed Dr. Cohen's IME report and said that Petitioner described using an End Loader, which required repetitive gripping and flexion/extension of his wrist to hold the throttle, for 4-5 hours a day. Dr. Minhas further indicated there is also vibratory exposure using the end loader which is also a risk factor for developing/worsening carpal tunnel syndrome.

The Commission finds Petitioner failed to prove he sustained an accidental injury that arose out of and in the course of his employment. Under the Act, compensable injuries must arise out of and in the course of employment. 820 ILCS 305/1(d) (West 2016); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Claimant has the burden of showing the injury was work related by a preponderance of the evidence. 820 ILCS 305/1(d) (West 2016). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203. "Whether an employee was acting within the course of the employment depends on the employment contract and the nature of

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the relationship, which must exist at the time of and in respect to the particular facts out of which the injury arose.” *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 165 (2007).

The phrase “in the course of employment” refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm’n*, 66 Ill. 2d 361, 366-67 (1977). “A compensable injury occurs ‘in the course of’ employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment.” *Wise v. Industrial Comm’n*, 54 Ill. 2d 138, 142 (1973). “The ‘arising out of’ component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to the employment so as to create a causal connection between the employment and the accidental injury.” *Sisbro Inc. v. Industrial Comm’n*, 207 Ill. 2d 193 (2003), citing *Caterpillar Tractor*, 129 Ill. 2d at 58; *Parro v. Industrial Comm’n*, 167 Ill.2d. 385, 393, 212 Ill. Dec. 537, 657 N.E.2d. 882 (1995). Before there can be consideration of whether an accidental injury arose out of employment, claimant must prove there was an accidental injury. *Elliott v. Industrial Comm’n* 303 Ill. App. 3d 185, 188 (1st Dist. 1999).

The Commission does not find Petitioner’s testimony credible. Petitioner testified the first onset of his symptoms occurred on October 16, 2023, prior to the October 19, 2023 date of accident listed on the Request for Hearing. The Commission notes that Petitioner provided various dates for the first onset of his symptoms to various doctors. At his initial visit to Physicians Immediate Care Petitioner reported that his symptoms began on Monday, October 16, 2023. However, Petitioner told Dr. Minhas his symptoms began on October 18, 2023, while reporting to Dr. Cohen that his symptoms began on October 10, 2023.

Petitioner also provided inconsistent evidence regarding the type of symptoms he experienced at onset. Petitioner testified he first noticed symptoms at night and that it caused him to wake up. Petitioner testified that he first noticed symptoms performing his job duties. Petitioner also denied experiencing any symptoms while performing his work activities. On October 23, 2023, Petitioner reported to Dr. Vilbar that he first experienced a loss of feeling while working in a cooler the Wednesday prior to his first appointment but, on November 9, 2023, he reported to Dr. Minhas that he experienced numbness in the hands and tingling in his finger while picking produce and building pallets at work.

Petitioner also provided inconsistent information to various medical providers regarding the type of injury sustained. Petitioner denied experiencing any work injury to Drs. Cohen and Minhas but also reported to Dr. Minhas that his symptoms began while picking produce and building pallets. On October 23, 2013, Petitioner originally reported to Dr. Vilbar that his main concern was his right arm because he was experiencing a pinching sensation in the right elbow from a lipoma which he hadn’t been able to treat. Petitioner testified to performing repetitive gripping, twisting, lifting and driving a twist throttle pallet truck for about 10 to 12 hours a day. Petitioner told Dr. Minhas he operated an end loader 4-5 hours a day but he reported to Dr. Vilbar that he experienced a loss of feeling in his fingers while using a pallet jack in a freezer. In his accident report, Petitioner stated that he suffered occasional numbness from gripping cases.

When confronted with medical records inconsistent with his trial testimony, Petitioner testified the medical records were incorrect. At trial, Petitioner denied telling Dr. Vilbar, on October 23, 2023, that his right elbow lipoma was causing any symptoms. (T.33). Petitioner testified he never reported to Dr. Vilbar that he was experiencing numbness radiating down his arm from the lump on his right arm.

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(T.28-29). Petitioner also denied reporting to Dr. Vilbar he used tools at his prior construction job. (T.29, 32). Petitioner testified he never used any type of tools and he only supervised those who did. Petitioner denied using any tools that torqued, vibrated, and that he did not perform any hammering at his prior construction job. (T.31). In his resume, Petitioner indicated he was proficient with most construction tools for building and/or assembling projects and that he was knowledgeable with handheld power tools and machinery related to construction and refurbishment. (Rx. 3).

The ‘arising out of’ component is primarily concerned with causal connection” and is satisfied if the claimant shows “the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” *Sisbro*, 207 Ill. 2d at 203. The Commission finds the opinions of Dr. Cohen to be more reliable than the opinions of Dr. Minhas. Dr. Cohen, who reviewed Petitioner’s medical records and examined Petitioner, opined that, in this case, there was insufficient exposure to directly associate Petitioner’s carpal tunnel syndrome to his new job with Respondent. Dr. Cohen testified carpal tunnel syndrome is a chronic compressive neuropathy of the median nerve at the wrist and palm which can be associated with certain occupational activities that specifically involve forceful and repetitive grasping and squeezing against resistance throughout the workday. Dr. Cohen indicated that he did not see any evidence suggesting that Petitioner’s carpal tunnel syndrome is directly related to the work activities that began on October 10, 2023.

The Commission finds the opinions of Dr. Minhas to be based upon information inconsistent with Petitioner’s trial testimony. Dr. Minhas did not review Petitioner’s job duties. Dr. Minhas first opined that Petitioner’s carpal tunnel was the result of a work-related incident on October 18, 2023. It wasn’t until after Dr. Minhas received a copy of Dr. Cohen’s IME report that his opinions changed from a work-related incident on October 18, 2023 to repetitive gripping and flexion/extension of the wrist holding a throttle for 4-5 hours a day. Dr. Minhas also stated Petitioner experienced vibratory exposure using an end loader. However, Petitioner did not testify to any vibratory exposure while operating the throttle of the pallet truck. The Commission notes Petitioner stipulated Dr. Minhas did not have his job description contained in his records. (T.47). With inconsistent information provided to him regarding Petitioner’s job duties, the opinions of Dr. Minhas are based on speculation, surmise or conjecture. A treating doctor’s findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information. See *Ravja v. United Airlines*, 2012 WL 440353 at 13 (Ill. Indus. Comm’n) interpreting *Horath v. Industrial Commission*, 96 Ill2d 349 (Ill. 1983). If the basis for an expert’s opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by the 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). It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill. App.3 507, 514-15 (First Dist. 2000). An employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who sustains an injury arising from a single identifiable event. *Durand v. Industrial Comm’n*, 224 Ill. 2d. 53 (2006); *Peoria County Belwood Nursing Home*, 115 Ill. 2d. 524 (1987)(An employee who alleges injury based on repetitive trauma must “show [] that the injury is work related and not the result of a normal degenerative aging process); *Nunn v. Industrial Comm’n*, 157 Ill. App. 3d 470 (1987) (Although medical testimony of causation is not necessarily required, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that [an employee’s] work activities caused the condition complained of).

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The Commission has carefully considered the evidence and cannot agree with the Arbitrator that Petitioner is credible. Respondent successfully impeached Petitioner's credibility on cross-examination, highlighting inconsistent testimony and inconsistencies in the medical records. The Commission finds Dr. Cohen more persuasive in this case. The Commission denies Petitioner's claim for failure to meet the burden of proof.

All other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 3, 2025, is hereby reversed and Petitioner's claim is denied.

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.

January 21, 2026

SJM-FJS-AHS
o-11/25/2025
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

/s/ *Frank J. Soto*
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC002013
Case Name	Jason Altheide v. Aldi
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Jack Linn
Respondent Attorney	William A Lowry Sr

DATE FILED: 3/3/2025

/s/ Francis Brady, Arbitrator
Signature

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

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION 19B/8A DECISION**

Jason P. Altheide
Employee/Petitioner

Case: 24 WC 002013

v.

Waukegan

Aldi,
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 Francis Brady, Arbitrator of the Commission, in the city of Rockford, on January 22, 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 **8(a) Surgical Authorization**

FINDINGS

On October 19, 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 \$45,236.36; the average weekly wage was \$869.93.

On the date of accident, Petitioner was 33 years of age, married with **0** dependent children.

Petitioner has not received all reasonable and necessary medical services.

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

ORDER

Aldi shall authorize and pay the reasonable and necessary costs associated with the right carpal tunnel release surgery prescribed by Dr. Minhas care as provided in Section 8(a) and 8.2 of the Act.

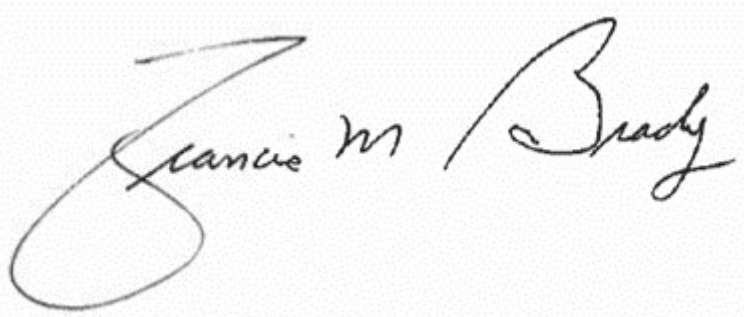
Aldi shall pay any amounts still owing to Fox Valley Orthopedic Associates, "Fox" for services rendered to Altheide as specified in PX 1 provided however that, as referenced at trial Aldi pay any such amounts direct to Fox at the lower of the actual amount, negotiated rate, or the Fee Schedule and in no event shall it be liable for charges exceeding 220.00 in total (TR 6, 7)

Aldi shall pay Altheide temporary total disability benefits of \$579.95 per week for a period of 2 weeks (10/31/23 – 11/13/23).

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 rue.



Signature of Arbitrator

March 3, 2025

STATEMENT OF FACTS

Before Petitioner, Jason P. Altheide, “Altheide” started working for Respondent Aldi, “Aldi” on October 10, 2023, he had never experienced numbness burning or weakness in his hands or wrists, let alone seen a doctor “for either (his) left or (his) right hand or wrist” (TR. 14, 15, 20, 49, 50) He had a lipoma but that was on his right elbow and was productive of no symptoms (TR)

On October 19, 2023, “the loss date”, Altheide’s employment with Aldi involved driving a twist throttle pallet truck “about 10 to 12 hours a day some days. . . gripping, twisting and lifting . . .” products and placing them on the back of the truck (TR. 13, 14). He noticed “symptoms in both. . . hands, mainly numbness, burning feelings, weakness (TR. 14, 50). He woke up at night with his “hands on fire . . . “while during the day his “fingers were numb” and his “grip was weak.”. (TR. 15)

He told his supervisor at Aldi, detailing in an “Employees Statement” that day that his “fingers are feeling numb occasionally on/off on both hands and he “had to grip the case” to avoid hurting his low back when “selectors pyramid pack” (TR. 16, PX. 3 28)

Aldi sent him to Physicians Immediate Care, “PIC” where he presented on October 23, 2023, complaining of weakness numbness and tingling of the left fingers, right forearm and right fingers since Mon., Oct 16, 2023 . . . “ (TR 16; PX 2., 3, 6, 12) These symptoms were not “the result of an injury. . . but they commenced “1 week after he started working (at Aldi’s)” where he “(d)oes operate a pallet jack that requires some force with turning the throttle” (PX 2., 3, 6). He told PIC personnel he also had a “lipoma on the . . . elbow which has been growing over time.” (TR. 26, 27, 28id) Altheide’s “Physical Exam” at PIC was negative including Tinel’s sign and Phalen’s test. (PX 2, 4, 7). PIC “suspect(ed)” that the lipoma on (Altheide’s) right elbow (was) causing (his) symptoms and “release(ed)” him to his (primary care provider for further evaluation and treatment of the lipoma.” (PX 2, 4, 5, 8)

Altheide never experienced burning, tingling or numbness radiating from his lipoma, “no symptoms at all” (TR. 26 – 29, 53, 54). To alleviate the symptoms (diagnosed as “Paresthesia of the skin” PIC directed no care at the lipoma but imposed restrictions effective “10/23/23” comprising avoidance of strong gripping with both hands; limited repetitive motion with both hands; and working no more than 8 hours per day or 40 hours per week. (PX 2, 4, 5, 8, 11) PIC directed Altheide to return “on 10/30/23 for a recheck” (PX 2, 4, 5, 8 9)

ALDI authorized Altheide's care on October 23, 2023, in writing, also identifying Broadspire Services Inc "Broadspire" as its Workers Compensation Insurance, (PX 2., 12). Altheide characterized his PIC presentation that date as involving a "work-related injury" (PX 2., 13).

Altheide was back at PIC on October 30, 2023, where personnel confirmed that on October 16, 2023, after two week's employment with Aldi using a pallet jack in the freezer he began to experience numbness in all his fingers and a pinching sensation that waxed and waned from his right elbow to his hand as well as similar, albeit milder, symptoms in the left hand (TR.16; PX 2.,14) PIC again noted Altheide's acknowledgement that "it" was "not the result of any injury" (PX. 14). Now he "came in for a follow-up of the numbness/tingling of the left fingers, right forearm, and right fingers. (id) The restrictions imposed on October 23, 2023, which he'd been observing at work, had helped as had "stretches for carpal tunnel" but on October 29, 2023, he'd had a burning sensation in his right fingers and presently he was also experiencing numbness. (PX. 2., 14, 18) The physical exam remained in every respect negative and Altheide's diagnosis continued as numbness, tingling, weakness, and burning (paresthesia's) (PX 2., 15). PIC discharged him from its care, reimposing the October 23, 2023, restrictions until November 13, 2023, and recommending that in the meantime his symptoms be evaluated by an orthopedic surgeon at Midwest Bone & Joint/Fox Valley Ortho (PX. 2., 15, 17, 20, 22)

PIC designated Altheide's October 30, 2023, return as a "Work Comp Visit (PX 2., 14) repeatedly emailing Broadspire in October and through November for "claim info" and "approval" (PX 2., 16, 21, 22, 25,26)

Altheide presented to Dr Minhas, "Minhas", an orthopedic surgeon on November 9, 2023, (TR. 17) where his chart reflects:

"This is a 33-year-old right-hand-dominant male who presents today with bilateral hand pain with associated numbness and tingling worse on the right side, after a work-related incident on 10/18/2023. (Altheide) explains that he works at the Aldi distribution center as a product selector. While at work on 10/18/23, he denies any specific injury, but towards the end of the day, began to have pain and numbness and tingling of the bilateral hands, particularly on the right side. He says that the numbness would radiate from the wrist to the index middle and ring fingers. This worsened the following day and he reported this to his job. He was subsequently seen at the physicians' immediate care and is here today for further evaluation. He denies any issues with his bilateral hands prior to this injury" (PX 3., 6, 20, 25).

Minhas examined Altheide's right hand demonstrating no significant swelling but positive Tinel's over the course of the medial nerve, proximal to the carpal tunnel along with a positive Durkan's compression test at the carpal tunnel. Minhas's exam of Altheide's left hand was positive for Durkan's compression but otherwise negative. (PX. 3, 6) Minhas believed Altheide's symptoms were consistent with bilateral carpal tunnel syndrome, so he ordered EMG and nerve conduction studies in order to help confirm the diagnosis, asses the severity of the bilateral carpal tunnel syndrome, and help rule out other peripheral neuropathies, sites of nerve compression and cervical radiculopathy. (PX 3., 6) In the meantime, Minhas limited Altheide's functionality by prescribing a brace for each wrist to be worn at night and during the day when doing activities which aggravated symptoms "including work". (TR 17., PX. 3, 6,7)

On December 7, 2023, the electro-diagnostics were performed confirming a diagnosis of carpal tunnel syndrome, "CTS" right wrist. (PX 3., 8)

Altheide followed up with Minhas on December 8, 2025, reporting he'd been wearing his wrist braces and his left sided symptoms had almost completely resolved but while he was about 70 to 80% better on the right, he continued to experience numbness and tingling on that side. (PX 3., 14) Minhas assessed that Altheide was returning that day for "bilateral hand pain with associated numbness and tingling worse on the right side after a

work-related incident on 10/18/23. . .) (PX 3., 14). Minhas instructed Altheide to continue wearing the braces for another four weeks and return at the end of that time for clinical reexamination. (id) He could work so long as he wore the braces. (PX., 3 15)

On January 4, 2024, Minhas saw Altheide again charting his left wrist was doing well, but he had experienced no significant improvement in terms of the numbness and tingling and pain on his right hand despite his diligent use of the brace. (PX., 3., 17) Minhas prescribed surgery consisting of a right carpal tunnel release. (PX3., 17) which was to be scheduled at a mutually agreeable date (PX 3., 17) Altheide could continue working so long as he wore the braces. 9 PX., 3., 18)

Altheide came into see Minhas on February 16, 2024 advising he was waiting to be sent for “an IME” on whether he’d be approved for carpal tunnel release surgery (PX 3., 20). He went on to report that his numbness and tingling were slowly worsening, especially when he stocked the freezer. (PX 3., 20) The symptoms were awakening him in the night more frequently (PX. 3 10). Minhas prescribed a medrol dosePak to palliate Altheide’s worsening right sided symptoms as he awaited the “IME scheduled for 3/4/24” and surgical approval (PX 3, 20) Petitioner had to wear the wrist brace at work (PX 3 21)

Mark S Cohen MD, “Cohen” examined Altheide on behalf of Aldi on March 4, 2024, diagnosing him with “right greater than left carpal tunnel syndrome. . .” which was not “directly related to the work activities that he began on October 10, 2023” (PX, 1, 3). Altheide should continue to work full duty “until he undergoes a carpal tunnel release operation on the right side.” (RX 1, 3)

By the time Altheide saw Minhas for a final time on May 21, 2024, he had left Aldi and taken a new job as a parts coordinator for Apex Material Handling “Apex”, though he applied for a position as a “Field FORKLIFT Service Technician on November 3, 2023, (TR. 52RX. 3, unpaginated). By February 13, 2024, however, he was being screened for Parts Inventory Coordinator and was found physically qualified to meet its “CRITICAL DEMAND(s)” without accommodation, though none involved the “forceful and repetitive grasping and squeezing against resistance through the workday. . .” or use of vibratory implicated as risky behaviors by Cohen. (TR. 18, 19, 40, 41; PX. 3, 23; RX. 1. 3; RX 3, unpaginated, Tyler Medical Services PREWORK SCREEN) . . .” The Apex job was “a lot easier “on Altheide’s “wrists and hands than the job at Aldi” and symptoms had improved though he continued “to have numbness and tingling mostly on the right side. (TR. 19, 20, 52; PX. 3. 23) His left side is manageable” (PX. 3, 23). Minhas reiterated his recommendation that Altheide undergo right carpal surgery but the limitation that Altheide needed a brace to work was lifted. (PX. 3 23, 24)

Presently Altheide experiences weakness and some numbness in his fingers and wrists, faces charges amounting to \$222 from Dr Minhas and wishes to undergo carpal tunnel release on the right which Aldi continue to deny (TR. 19, 20, 21)

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:

At trial, Aldi stated on the record that Altheide’s accident neither arose out of nor in the course of his employment with Aldi. (TR. 5, Arb’s Ex 1). But testimonial and documentary evidence make clear that from the date he went to work for Aldi, October 10, 2023, through the loss date, Altheide’s job required him to forcefully grip and twist products, sometimes over lengthy shifts. No doubt is expressed anywhere in the record

that the activity occurred during this time, not by PIC, not by Minhas, not by Cohen. While Cohen indicated that the activity did not directly relate to Altheide's carpal tunnel, he didn't dispute that it occurred.

The timeline established by Altheide's testimony regarding the onset of his symptoms does not deviate materially from the chronology developed in the medical records. He testified he started the job on October 10, 2023, and "... while (he was) doing the job ... started to notice symptoms in both ... hands mainly numbness burning feelings, weakness. (TR. 14) This recitation is consistent with:

-PIC's October 23, 2023, charting that "last week Wednesday (judicial notice is taken that "Wednesday" was October 18, 2023) he was experiencing loss of feeling to all his fingers ... us(ing) a pallet jack in the freezer. (PX 2, 23,):

-PIC's October 23, 2023, charting that his symptoms commenced "Mon. Oct. 16, 2023 (PX 2, 3); and,

- Altheide's testimony that when he started working for Aldi driving a twist throttle truck for multiple hours a day, (he) had immediate onset of those symptoms" (Tr 50).

Considered solely in conjunction with his visit to PIC on October 23, 2023, Altheide's bald statement that he had symptoms immediately might give pause. Likewise, limited like that, Cohen's recounting that he first noted his problems when they awakened him at night (RX. 1, 2) might prompt hesitation.

But weighed properly in context of all the testimony (including the revelation that he had three days of training including not just his job duties but also interacting with supervisors and watching short videos (TR. 24, 25) and his admission he woke up at night with his hands burning (TR 15) allows the inferences he was not focused solely on driving the twist throttle truck right away and that, indeed, the first time he really "got the message" was being awakened nocturnally. Indulging these inferences, the dates line up much more closely. Persuasive is the reasoning reflected in the Appellate Court's unpublished decision of *Ford Motion Co., V Ill. Workers Comp. Comm'n 2022 Ill App (1st) 21121W*; that is, discrepancies in Altheide's testimony, to the extent they exist at all, are de minimus and he is altogether credible. Also illuminative is the Court's analysis in another unpublished decision: *Barrow v Ill. Workers' Comp Comm'n 2016 IL App (4th) 150626WC* wherein it stated a worker asserting repetitive trauma must prove he was injured in some risk connected with or incidental to the employment and, mindful of that, relied prominently on the worker's own testimony that his work was heavy and he blamed it for triggering his pain.

There is no dispute that on October 19, 2023, Altheide reported to Aldi the symptoms he was having, and Aldi sent him for care to PIC. PIC imposed limitations on his ability to work. Those two circumstances make the loss date as plead by Altheide the proper date of manifestation. *Durand v. Indus. Comm'n (RLI Ins) 224 Ill 2d 53 862N. E. 2d 918 308 Ill Dec 715 (2006)*

The record demonstrates that Altheide suffered repetitive trauma on various occasions after October 10, 2023, due to the movements required as he went about his scheduled job with Aldo and these traumas manifested such that the accident date is October 19, 2023.

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

Altheide's "condition of ill being" is right greater than left CTS for which right release surgery has been prescribed. His "injury" is a series of movements he had to perform in his job for Aldi in mid-October 2023. Determining whether the former is related to the latter starts with investigating whether Altheide had pathology in his wrists and hands preexisting his job duties in mid- October 2023.

Scouring the record (See Findings of Fact above) permits of only one conclusion: he didn't. Altheide simply didn't have any hand or wrist problems before he started working for Aldi. No complaints, no limitations, no treatment, nothing. He had "pinching" at his right elbow which he felt to his hand but it's not clear that these preceded his Aldo employment, and, in any event, they are arm parenthesis. (TR 26, 27; PX., 2, 3)

He had a lipoma growing on his right elbow "a "couple months maybe" before hiring on with Aldi (TR 26, 27, PX. 2, 3) PIC related his hand and wrist symptoms to that lipoma (PX. 2, 3, 4) but simultaneously restricted him at work "which should help (his) symptoms."

The restrictions indicate that, from the outset of care, Altheide's work activities were viewed as worsening his symptoms. When he limited them as restricted his symptoms improved. That makes the activities causative factors. And that's regardless of the lipoma which, in any event, was never cited again as an etiology whether by PIC, by Altheide's treating orthopedist, Minhas, or by Aldi's expert, Cohen.

Accordingly, even if one were to determine, very dubiously, that Altheide had relevant preexisting pathology and insist the evidence must disclose medical opinion, PIC's explanation of the basis for work restrictions proves causation.

Finally, while not essential to finding that Altheide's work activities effected his CTS, Cohen's testimony bolsters that notion. Three times he could have severed any connection definitively but three times, metaphorically speaking, his collar got a little tight and he reached up and loosened it with it a crooked semantic finger. When he addressed associating Altheide's duties with his carpal tunnel syndrome he hedged stating he couldn't do it "directly. Considering all the evidence he summarized he saw none "to suggest that his carpal tunnel syndrome is directly related to the work activities he began on October 10, 2023." Yet again, in concluding, Cohen could not bring himself to simply state there is not a relationship. Instead, he closed writing "I do not believe that his carpal tunnel syndrome is directly related to the job duties that he began approximately 1 week before his symptoms began."

Cohen's credentials are not apparent in the record beyond his signature "tag" revealing he directs the Hand and Elbow Section at Midwest Orthopedics at Rush and is Professor of Orthopedic Surgery. That information alone though demonstrates he's been writing in milieus where precision counts. His words shouldn't, and won't be, overlooked. Choosing to include a qualifier each time he expressed his opinion on causation, a qualifier leaving open the door to work as a cause "indirectly" is meaningful.

The repetitive trauma need not be the sole or even principal cause of Altheide's CTS, for it to be compensable. *Fierke v Industrial Comm'n*, 309 Ill App 3rd 1037, 723 N.E. 2d 846, 243 Ill Dec. 543 (3rd Dist, 2000). This record discloses overwhelmingly that, if Altheide's discomfort was not solely triggered by his job activity with Aldi then certainly it was aggravated or accelerated by twisting the throttle.

Here, as in *Tazewell Cnty v Ill. Workers Comp. Comm'n*, 2025 I; App (4th)230754WC, "the testimony of claimant and the histories contained in (his) medical records . . . support a finding" that he sustained repetitive trauma because of operating his throttle truck, an activity Aldi "might reasonably expect (him) to perform incident. . ." to "the time and space" of the product selector's function. *Tazewell Cnty*, 230754, p33

Altheide's testimony concerning his employment prior to Aldi (TR. 29 – 32) minimized but did not absolutely foreclose his use of handheld power tools. It seems likely he did use power tools before he came to work for Aldi but infrequently and perhaps not while he worked for "Excellent Backyards and/or American Play Sets" which was the universe of cross examination. At any rate, there is no evidence their use generated symptoms, complaints, care, or limitations; nor is there opinion testimony connecting their use to his CTS.

Finally, Altheide's testimony regarding the timeline for his job search, as well as its motivations, is not sufficiently contradictory as to render him incredible. It's perfectly plausible he wanted a job with a different exertional level even in early November 2023. Indeed, that desire is probable given that on October 29, 2023, he reported to PIC that though he had been improving with restrictions "yesterday his symptoms recurred, and he had numbness and tingling in the second and third fingers of the right hand."

Claiming that Altheide was "less forthcoming about certain issues" is, in the final analysis, like an oasis in the desert, shimmering perhaps in the distance but, upon close inspection, a mirage.

Concerning causation (and indeed accident) the record is plain:

- Altheide had no relevant preexisting pathology.
- there is no evidence that his CTS resulted from the degenerative aging process
- the evidence concerning the nature of Altheide's job duties at Aldo is unchallenged.
- PIC immediately restricted Altheide from fully performing those duties so they didn't worsen his symptoms.
- Cohen refused to affirmatively sever Altheide's job movements as causative factors in the development of his CTS

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:

Altheide submitted medical bills totaling \$222.00 (RX., 6,7; PX. 1) which were admitted over the objections of Aldi that it: a) had no liability in the first instance as Altheide had proved neither accident nor causation; and b) regardless, should not have to pay because the charges shown in the bills had not been reduced to the Fee Schedule (TR 8. 9, 56)

Aldi was and is wrong concerning accident and causation. Altheide proved both propositions by a preponderance of the evidence as is detailed at some length above. Thus, as Aldi is obligated, any amounts still owing to Fox Valley Orthopedic Associates, "Fox" for services rendered to Altheide as specified in PX 1 are awarded in his favor provided however that, as referenced at trial Aldi pay any such amounts direct to Fox at the lower of the actual amount, negotiated rate, or the Fee Schedule and in no event shall it be liable for charges exceeding 220.00 in total (TR 6, 7)

Cohen testified that Altheide's treatment though March 4, 2024 "appears reasonable" and that opinion encompasses all of the dates on PX1 except for the last: May 21, 2024. The charting, from that visit demonstrates Altheide's complaints, his examinations, his complaints, diagnoses, care modalities including prescriptions, and prognosis were exactly of a piece with the earlier treatment Cohen classified "reasonable."

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Aldi did not challenge Altheide's claim that he missed work from October 31, 2023, through November 13, 2023, a period of two weeks. (TR 7, 8). Aldi argued, more fundamentally, it should not have to pay benefits for the two weeks as there was "No liability" (TR 7, 9; Arb's Ex 1)

Does Altheide's evidence preponderate in favor of a holding that there was, in fact "liability" such that Aldi must pay two weeks of benefits?

Yes.

The evidence reflects Altheide had to forcefully twist the throttle in his pallet truck often throughout long workdays. It reveals that prior to the date he took his job with Aldi, October 10, 2023, Altheide had no hand or wrist complaints, had never been restricted, had never sought let alone received care, and certainly hadn't received a surgical prescription. And all this was true even though he'd used vibrating tools before for different employers and had a lipoma at his elbow growing for a few months before he hired on with Aldi.

Moreover, the evidence unquestionably sets out Altheide got work restrictions on both October 30, 2023 and October 30, 2023 to protect him from work movements that aggravated his symptoms and on October 31, 2023 Aldi stopped accommodating them (TR 17) Thus, Altheide stipulated period of two weeks until he came back on November 14, 2023 per the direction of Minhas to return to full duty (TR. 18)

Aldi owes Altheide two weeks of TTD benefits at the weekly rate of \$579.95.

WITH RESPECT TO ISSUE (O) 8(a) SURGICAL AUTHORIZATION THE ARBITRATOR FINDS AS FOLLOWS:

Minhas has prescribed a right sided carpal tunnel surgery for Altheide (TR 18, PX. 3., 17). To date however Aldi has refused to pay, arguing it has no liability under the Illinois Worker's Compensation Act (TR. 9, 18, and Arb's Ex 1) Given that Altheide has proved by a preponderance of the evidence both that his injury (repetitive activities) arose out of and in the course of his work for Aldi, and that those injuries caused, or contributed to, the onset of bilateral CTS, Aldi IS obligated to pay for reasonable medical care necessary to restore Altheide's health. Cohen substantiates the advisability of right CTS surgery, characterizing Altheide as a "very favorable candidate . . ." for that procedure (RX., 1, 3) Cohen goes on to observe that "(f)ortunately, carpal tunnel syndrome is a curative condition with surgical intervention. (RX. 1., 3) Altheide has satisfactorily demonstrated that the pending surgery is likely to cure the ill effects of the condition he developed relating to on-the-job activities. He is awarded the right sided carpal tunnel release procedure.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012426
Case Name	Eve Semlow v. Manor Care Health Care Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0012
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Dexter Evans
Respondent Attorney	Logan March

DATE FILED: 1/21/2026

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF 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

EVE SEMLOW,

Petitioner,

vs.

NO: 20 WC 012426

MANOR CARE HEALTH SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's analysis regarding permanency under §8.1b(b) of the Act. For factor (v) on pages 13-14, the Commission adds that this factor be given moderate weight.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$652.90 per week for a period of 91-6/7 weeks, commencing June 21, 2020 through March 25, 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 for the reasonable and necessary medical services, as provided in PX6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including such payments reflected in RX8.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$587.61 per week for a period of 187.50 weeks, for the reason that the injury to the left shoulder caused 12.5% loss of the person as a whole, as provided in §8(d)2 of the Act, and the injury to the cervical spine caused 25% loss of the person as a whole, as provided in §8(d)2 of the Act.

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

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

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

January 21, 2026

O: 11/25/25

KAD/swj

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	20WC012426
Case Name	Eve Semlow v. Manor Care Health Care Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Dexter Evans
Respondent Attorney	Daniel Flores

DATE FILED: 4/28/2025

/s/ Ana Vazquez, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 22, 2025 4.05%

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Eve Semlow
 Employee/Petitioner

Case # **20** WC **012426**

v.

Consolidated cases: **N/A**

Manor Care Health Services
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **February 3, 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 be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On the date of accident, **March 24, 2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$50,926.20**; the average weekly wage was **\$979.35**.

On the date of accident, Petitioner was **47** years of age, *married* with **2** dependent children.

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

Respondent shall be given a credit of **\$23,856.74** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$23,856.74**. See Ax1 at No. 9.

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

ORDER

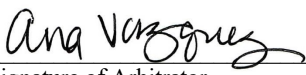
Respondent shall pay for the reasonable and necessary medical services, as provided in Px6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including such payments reflected in Rx8.

Respondent shall pay Petitioner temporary total disability benefits of **\$652.90/week** for **91 6/7** weeks, commencing **June 21, 2020** through **March 25, 2022**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$587.61/week** for **187.50** weeks because as to the left shoulder, the injuries sustained caused **12.5% loss of the person-as-a-whole**, as provided in Section 8(d)2 of the Act, and as to the cervical spine, the injuries sustained caused **25% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

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

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



 Signature of Arbitrator

April 28, 2025

PROCEDURAL HISTORY

This matter proceeded to arbitration on February 3, 2025, before Arbitrator Ana Vazquez in Chicago, Illinois. The issues in dispute include (1) causal connection, (2) unpaid medical bills, (3) temporary total disability (“TTD”) benefits, and (4) the nature and extent of the injury. Arbitrator’s Exhibit (“Ax”) 1. All other issues have been stipulated. Ax1.

The Arbitrator notes that after proofs were closed, the Parties stipulated as to the following, “Petitioner claims to be entitled to TTD period(s): 6/21/20 through 3/25/22[,] representing 91 and 6/7 weeks. Respondent disputes and claims through Dr. Singh’s MMI finding.” The Arbitrator considers the Agreed Stipulation to be a part of the record and is admitted as Ax2.

FINDINGS OF FACT

Petitioner began working at Respondent as a registered nurse in April 2003. Transcript of Proceedings on Arbitration (“Tr.”) at 13. Petitioner was working as a registered nurse in registry at Respondent on March 24, 2020. Tr. at 14.

Petitioner testified that prior to March 24, 2020, she had not had any injuries or treatment to her neck, left shoulder, or left arm. Tr. at 15, 36.

Accident

Petitioner testified that on March 24, 2020, at the end of a 17-hour shift, a resident grabbed and twisted her left arm when she went to make sure he did not fall after he stood up. Tr. at 14. Petitioner testified “[h]e grabbed my left arm twisting it, and he was twisting my shoulder, arm, and neck, and I just jumped back.” Tr. at 14. Petitioner testified that she felt pain in the left-side of her neck, her left shoulder, and left arm. Tr. at 14.

Petitioner sought medical treatment two weeks later, explaining that at the beginning of the COVID-19 pandemic, she was picking up a lot of extra shifts because of a nursing staff shortage and because she thought that the pain would go away. Tr. at 15. Petitioner testified that a few days before she sought treatment, she was having difficulty lifting Styrofoam trays out of the server cart to serve patients. Tr. at 15-16.

Summary of Medical Records

On April 10, 2020, Petitioner was seen at Physicians Immediate Care for complaints of left shoulder and left elbow pain since March 24, 2020. Petitioner’s Exhibit (“Px”) 2 at 7-10, 23-25. A consistent accident history is noted. X-rays of the left elbow and left shoulder were obtained. Petitioner’s diagnoses were strain of other muscles, fascia, and tendons at shoulder and upper arm level, left arm and lateral epicondylitis, left elbow. Petitioner was prescribed naproxen and acetaminophen. Petitioner was instructed to ice the painful areas. Petitioner was released to return to work with the restrictions of no lifting over shoulder greater than 10 pounds, no lifting from waist to shoulder greater than 20 pounds, no lifting below waist greater than 20 pounds, and no pulling or pushing greater than 30 pounds. Petitioner was referred to Physicians Immediate Care by Respondent. Tr. at 16. Respondent accommodated the restrictions given to Petitioner by Physicians Immediate Care. Tr. at 16.

Petitioner returned to Physicians Immediate Care on April 16, 2020. Px2 at 26-29. Petitioner testified that at the time of her follow up visit on April 16, 2020, she had pain, numbness, tingling, and weakness in her left arm. Tr. at 17. She was also starting to drop things and had difficulty lifting her left arm above waist and shoulder

level. Tr. at 17. Petitioner experienced numbness and tingling into her left hand. Tr. at 17. Petitioner's diagnoses were unchanged. Petitioner was prescribed prednisone. Petitioner was instructed to use only Tylenol for pain and to continue applying ice. Physical therapy was ordered. Petitioner's work restrictions were maintained.

Petitioner followed up with Physicians Immediate Care on April 30, 2020. Px2 at 45- 48. Petitioner's diagnoses were unchanged. Petitioner's restrictions were maintained. MRIs of the left elbow and upper arm were ordered. Physical therapy was put on hold until the MRIs were obtained.

Petitioner underwent a left elbow MRI on May 5, 2020 at Homer Glen Imaging, which demonstrated (1) tendinopathy with superimposed mild partial thickness tearing of the common extensor tendon at the origin and (2) sprain of the radial collateral and lateral ulnar collateral ligaments at the origin. Px2 at 82; Px3 at 4; Px5 at 8.

Petitioner underwent a left shoulder MRI on May 5, 2020 at Homer Glen Imaging, which demonstrated (1) moderate supraspinatus tendinosis with superimposed mild focal interstitial tearing of the distal anterior supraspinatus tendon approaching the footplate and (2) findings suggestive of nondisplaced tearing of the superior and posterior superior labrum. Px2 at 83-84; Px3 at 5-6; Px8 at 11-12.

Petitioner returned to Physicians Immediate Care on May 14, 2020. Px2 at 67-70. Petitioner's pain had worsened since her previous visit. Petitioner's diagnoses were (1) other articular cartilage disorders, left shoulder, (2) incomplete rotator cuff tear or rupture of left shoulder, not specified as traumatic, and (3) spontaneous rupture of extensor tendons, left upper arm. Petitioner was instructed to use Meloxicam and Tramadol. Petitioner was placed on a right-hand duty only restriction. Petitioner was referred to Parkview Orthopaedic Group.

On May 21, 2020, Petitioner was seen by Dr. Henry J. Fuentes at Parkview Orthopaedic Group. Px3 at 20. A consistent accident history is noted. On physical examination of the left shoulder, positive Kennedy's, Neer's, O'Brien, and Speed tests were noted. Dr. Fuentes noted that his review of the May 5, 2020 MRI showed moderate supraspinatus tendinosis with superimposed mild focal interstitial tearing of the distal anterior supraspinatus tendon approaching the foot plate and findings suggestive of a nondisplaced superior and posterior superior labral tear. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder with a possible SLAP tear. Dr. Fuentes administered a cortisone injection into the left glenohumeral joint and ordered physical therapy. Dr. Fuentes released Petitioner to return to work light duty with no use of the left upper extremity. Petitioner testified that she believed that the first cortisone injection helped somewhat, but not enough to completely alleviate the pain. Tr. at 19.

Petitioner followed up with Dr. Fuentes on June 18, 2020. Px3 at 23. Dr. Fuentes noted that Petitioner reported that her left shoulder felt better since the cortisone injection and undergoing physical therapy. On examination of the left shoulder, positive O'Brien's and Speed tests were noted. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder with possible SLAP tear, improved. Dr. Fuentes recommended that Petitioner continue physical therapy. Dr. Fuentes released Petitioner to work light duty, but not more than four-hour shifts per day.

On July 9, 2020, Dr. Fuentes noted that treatment options were discussed with Petitioner including continued physical therapy versus arthroscopic surgery. Px3 at 65. Dr. Fuentes noted that Petitioner wanted to hold off on surgery. Petitioner was to continue with physical therapy. Petitioner was kept off work.

Petitioner returned to Dr. Fuentes on July 23, 2020, at which time she complained of shoulder and elbow pain, greater in the elbow, especially over the lateral aspect of the elbow. Px3 at 64. Petitioner reported that she had been having elbow pain about as long as the shoulder pain. Dr. Fuentes' assessment was lateral epicondylitis of

the left elbow and partial thickness rotator cuff tear of the left shoulder with possible SLAP tear. Dr. Fuentes administered a cortisone injection into the area of the lateral epicondyle. Additional physical therapy was ordered. Petitioner was kept off work. Petitioner testified that she felt some relief, but not much relief, after the second injection. Tr. at 20.

Petitioner next saw Dr. Fuentes on August 20, 2020. Px3 at 63. Petitioner reported that the shoulder and elbow were feeling better since the last visit. Dr. Fuentes noted that Petitioner had been attending physical therapy. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder with possible SLAP tear and lateral epicondylitis of the left elbow, improved. Dr. Fuentes recommended Petitioner continue physical therapy. Petitioner was kept off work.

Petitioner attended 15 sessions of physical therapy at GoodLife Physical Therapy between May 26, 2020 and September 16, 2020. Rx4 at 1-36, 70-122. Petitioner testified that she attended physical therapy, but that it did not alleviate all the problems. Tr. at 22.

Petitioner returned to Dr. Fuentes on September 17, 2020, at which time Petitioner reported that her shoulder was feeling much better. Px3 at 62. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder with possible SLAP tear with lateral epicondylitis of the left elbow, improved. Dr. Fuentes instructed Petitioner to continue with her home exercise program. Petitioner was released to return to work full duty.

Petitioner testified that in September 2020, she was not doing very good, that she attempted to work the day shift, and that the physical therapists were lifting all the patients for her because they knew that she had an injury. Tr. at 21. Petitioner testified that she had difficulty working the day shift, and so she tried to work the evening shift, which was a little easier, but that she still had difficulty and the physical therapists continued to do the lifting. Tr. at 21-22. Petitioner then tried to work the third shift in wound care, with the physical therapists continuing to do the lifting, and she still had pain and difficulty and could not perform her duties like she used to. Tr. at 22.

On September 29, 2020, Petitioner saw Dr. Fuentes and reported that she had worked three shifts and that her shoulder did not feel right. Px3 at 61. Petitioner continued to complain of left shoulder pain. Dr. Fuentes noted positive Neer's, Kennedy's, O'Brien's, and Speed tests on examination, as well as mild weakness of the supraspinatus. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder and possible SLAP tear with persistent pain. Dr. Fuentes noted that Petitioner had already undergone three months of physical therapy and that she did not want to undergo additional physical therapy. Dr. Fuentes released Petitioner to work light duty with no overhead lifting/activity and no lifting greater than 10 pounds.

Petitioner followed up with Dr. Fuentes on October 22, 2020, at which time she continued to complain of significant left shoulder and upper arm pain, as well as pain along the lateral aspect of the left elbow. Px3 at 60. Dr. Fuentes' assessment was partial thickness rotator cuff tear of the left shoulder with possible SLAP tear and lateral epicondylitis of the left elbow. Dr. Fuentes recommended left shoulder arthroscopic surgery with subacromial decompression/partial acromioplasty and debridement of SLAP tear with possible repair of rotator cuff tear with possible open biceps tenodesis. Dr. Fuentes also recommended a steroid injection of the lateral epicondyle of the left elbow to be administered at the time of surgery.

On December 16, 2020, Petitioner underwent a left shoulder arthroscopy with subacromial decompression with partial acromioplasty. Px3 at 86-88. Petitioner's postoperative diagnosis was impingement syndrome. Petitioner was kept off work by Dr. Fuentes following surgery. Tr. at 23. Petitioner testified that after surgery, she had some relief, but she was experiencing the same symptoms as prior to surgery, including pain, numbness, and

tingling down the left side, as well as pain in the left side of her neck and back and left shoulder down the arm. Tr. at 24. Petitioner testified that her left shoulder was not any better. Tr. at 24.

On December 29, 2020, Dr. Fuentes noted that Petitioner complained of occasional shoulder pain. Px3 at 59. Dr. Fuentes' assessment was impingement syndrome of the left shoulder. Dr. Fuentes recommended physical therapy and prescribed Norco for pain. Petitioner was kept off work.

Petitioner next saw Dr. Fuentes on January 28, 2021, at which time Dr. Fuentes noted that she continued to complain of significant pain over the left upper back and trapezial area especially when she rotated her head to the left. Px3 at 57, 69. Petitioner denied numbness or tingling in the left upper extremity. Dr. Fuentes noted that the January 25, 2021 physical therapy note documented Petitioner presenting with radicular symptoms into the left arm with pain and restrictions in cervical mobility consistent with cervical derangement. Dr. Fuentes noted that x-rays of the cervical spine showed straightening of the cervical spine on the lateral view with mild spondylolisthesis of C4 over C5 with degenerative disc disease at C5-6. Dr. Fuentes' assessment was status post left shoulder arthroscopy with subacromial decompression/partial acromioplasty, rule out left-sided cervical radiculopathy. A cervical spine MRI was ordered, and Petitioner was referred for a neurological consultation with EMG of the left upper extremity. Dr. Fuentes recommended that Petitioner continue physical therapy. Petitioner was kept off work.

Petitioner followed up with Dr. Fuentes on February 23, 2021. Px1 at 56. Dr. Fuentes noted that the cervical spine MRI and EMG had not been approved. Petitioner reported that she was miserable and continued to complain of pain in the left side of her neck radiating into the left side of her skull and over the left trapezial area and shoulder area. Petitioner also complained of a divot over the lateral aspect of the left elbow. Dr. Fuentes' assessments were (1) status post left shoulder arthroscopy with subacromial decompression/partial acromioplasty, rule out left-sided cervical radiculopathy and (2) probable partial tear of the forearm extensor tendon onto the lateral epicondyle. Dr. Fuentes referred Petitioner to Dr. Bayran, a pain specialist, or his associate. Petitioner was instructed to continue physical therapy. Petitioner was kept off work.

Petitioner returned to Dr. Fuentes on March 4, 2021. Px3 at 54. Dr. Fuentes noted that Petitioner had undergone an IME with Dr. Phillips and that Dr. Phillips believed that the shoulder was recovering well and that he did not believe that the persistent pain over the medial parascapular area radiating into the neck and down the arm were related to the shoulder, but instead her cervical spine. Dr. Fuentes noted that the cervical spine MRI of February 26, 2021 showed degenerative changes in the cervical spine with mild to moderate central canal stenosis at C5-6, mild central canal narrowing at C6-7, and multilevel neural foraminal narrowing from C3- to C7. Dr. Fuentes' assessments were (1) status post shoulder arthroscopy with subacromial decompression/partial acromioplasty and (2) acquired cervical spinal stenosis with left-sided radiculopathy. Dr. Fuentes noted that he agreed with Dr. Phillips and recommended that Petitioner continue with physical therapy for another six weeks. Dr. Fuentes referred Petitioner to Dr. Chintan Sampat and recommended a neurological consultation with EMG of the left upper extremity. Dr. Fuentes released Petitioner to work light duty with no overhead lifting/activity and no lifting greater than 10 pounds.

Petitioner attended 33 sessions of physical therapy at GoodLife Physical Therapy between January 6, 2021 and March 30, 2021. Px4 at 123-205.

Petitioner again saw Dr. Fuentes on April 1, 2021, at which time she continued to complain of significant pain over the left trapezial area radiating into the left side of the base of the neck and into the left shoulder and upper arm. Px3 at 52. Dr. Fuentes noted that the physical therapy note of March 30, 2021 noted that Petitioner had reached a plateau and was potentially regressing with upper extremity function. Dr. Fuentes' assessment was status post left shoulder arthroscopy with subacromial decompression/partial acromioplasty and possible

cervical spine radiculopathy. Dr. Fuentes instructed Petitioner to continue with shoulder exercises on her own. Dr. Fuentes continued to recommend referrals to Dr. Sampat, Dr. Russell Glantz, and a pain specialist. Dr. Fuentes noted that Petitioner was to continue working light duty, but not more than a four-hour shift per day.

Petitioner saw Dr. Russell H. Glantz at Parkview Orthopaedic Group on April 20, 2021. Px3 at 49-51. Petitioner reported that since the injury she had had shoulder pain traveling down to the elbow. Dr. Glantz noted that the neck symptomology may not have been present initially and that Petitioner was not exactly sure when it became more evident to her, possibly around August or September 2020. Dr. Glantz noted that after the injury, she never had any tingling or numbness in the left arm or fingers, and that at that time, she still did not have any left upper extremity tingling. Dr. Glantz noted that Petitioner presented with a pain syndrome predominantly involving the shoulder and arm with intermittent neck symptomology. Dr. Glantz noted that Petitioner's neurologic exam did not demonstrate any obvious weakness, sensory deficit, or reflex asymmetry and that he could not make a neurologic diagnosis. He noted that from a neurological point of view, there was a differential diagnosis including cervical radiculopathy or a brachial plexus stretch injury which might have occurred at the time of the work injury. He noted, however, that he would expect there to have been some sensory changes or paresthesias and that Petitioner had never had any. Dr. Glantz noted that he would be performing an EMG on Petitioner on April 23, 2021, to help determine if there was any primary neurologic dysfunction coming from either the neck or brachial plexus. Dr. Glantz noted that complicating the issue was that 13 months had passed since the injury and if findings were present then, some of them may have dissipated by that time. He noted that it may be reasonable to try a cervical epidural steroid injection for diagnostic and therapeutic purposes.

On April 23, 2021, Petitioner underwent an EMG, which demonstrated (1) a mild to moderately active left-side C6-7 radiculopathy and (2) no evidence of any more distal neuropathy, including no evidence of any brachial plexus dysfunction. Px3 at 74-76.

On April 30, 2021, Petitioner saw Dr. Chintan Sampat for a spine evaluation. Px3 at 45-46. A consistent accident history is noted. Dr. Sampat noted that following the injury, Petitioner started having neck pain radiating down the left shoulder with initial pain down to the elbow, with numbness and tingling. Dr. Sampat noted that the EMG showed C6-7 radiculopathy. Petitioner reported that she stopped using her left upper extremity and dropped objects when holding them. Petitioner was referred to Dr. Intesar Hussain for a cervical epidural spine injection. Dr. Sampat noted that if Petitioner did not improve, she might require an anterior cervical discectomy and fusion secondary to the work injury, but that he wanted to exhaust all conservative nonsurgical treatment measures.

Petitioner saw Dr. Intesar Hussain of Parkview Orthopaedic Group on May 4, 2021. Px3 at 96-98. Dr. Hussain's assessments were neck pain and left-sided C6-7 radiculopathy secondary to mild spinal stenosis, worse at C5-6. Dr. Hussain noted that Petitioner was a good candidate for a cervical epidural steroid injection at the C6-7 level via a left paramedial approach under fluoroscopic guidance.

On May 6, 2021, Petitioner saw Dr. Fuentes, at which time Dr. Fuentes noted that the EMG reported mild to moderate active left-sided C6-7 radiculopathy. Px3 at 44, 68. Petitioner continued to complain of pain in the neck radiating into the left upper extremity, associated with numbness and tingling in the entire upper extremity. Petitioner was kept off work and was instructed to continue follow up with Dr. Sampat and Dr. Hussain.

On May 13, 2021, Petitioner underwent a cervical epidural steroid injection at C6-7 via a left paramedial approach under fluoroscopy. Px3 at 94-95. Petitioner experienced minimal relief with the epidural steroid injection. Tr. at 27.

Petitioner saw Dr. Sampat on May 21, 2021. Px3 at 42-43, 67. Dr. Sampat noted that the cervical epidural steroid injection of May 13, 2021 provided Petitioner minimal relief. On examination of the cervical spine, Dr. Sampat noted significant weakness with left triceps, some numbness and tingling in the left C6 and C7 regions down to the fingertips, and a positive Spurling's on the left side. Dr. Sampat noted that at that point, Petitioner had tried injections, physical therapy, and a multitude of medications. Dr. Sampat recommended an anterior cervical discectomy and fusion from C4-7 to help decompress the neural elements and stabilize the C4-5 spondylolisthesis deformity. Petitioner was kept off work. Dr. Sampat noted that he anticipated that Petitioner would be able to return to work full duty approximately three months postoperatively and that she could return to light work at four weeks postoperatively.

Petitioner followed up with Dr. Fuentes on June 3, 2021, at which time Dr. Fuentes noted that Petitioner underwent a cervical epidural steroid injection by Dr. Hussain since her last visit and that Petitioner reported no relief. Px3 at 41. Petitioner continued to complain of pain in the neck and over the left trapezius and upper back region. Petitioner also complained of increased numbness in the left upper extremity. Dr. Fuentes' assessment was left-sided C6-7 radiculopathy. Petitioner was kept off work.

Petitioner again saw Dr. Fuentes on July 29, 2021. Px3 at 40. Dr. Fuentes recommended that Petitioner follow up with Dr. Sampat. Dr. Fuentes kept Petitioner off work until she was seen by Dr. Sampat.

Petitioner returned to Dr. Sampat on August 18, 2021. Px3 at 38-39, 66. Dr. Sampat noted that he reviewed the IME by Dr. Kern Singh and that he disagreed with Dr. Singh's causation opinion and also disagreed with Dr. Singh's opinion that Petitioner was at MMI. Petitioner was kept off work. Dr. Sampat continued to recommend a C4-7 anterior cervical discectomy and fusion with iliac crest bone harvest.

On December 2, 2021, Petitioner underwent a C4-5, C5-6, and C6-7 anterior cervical discectomy and fusion with anterior cervical plating, use of allograft bone. Px3 at 216-218, 79-85. Petitioner's postoperative diagnoses were C4-6 cervical stenosis and C4-5 spondylolisthesis with upper extremity cervical radiculopathy. Petitioner was seen by Dr. Sampat for postoperative follow up on December 3, 2021. Px3 at 36, 163. Dr. Sampat noted that overall, Petitioner's left arm pain was much better than before surgery, and that Petitioner reported overall doing well. Petitioner testified that following neck surgery, she was feeling 50-percent better and that the numbness, tingling, pain, and weakness improved. Tr. at 29. Petitioner was kept off work following neck surgery. Tr. at 29.

Petitioner again saw Dr. Sampat on January 7, 2022, at which time Dr. Sampat noted that the tingling in the left arm was much better than before surgery, though Petitioner still had some slight tingling in the left arm, but the intensity was improved. Px3 at 34, 161. Dr. Sampat noted that Petitioner was off work and would slowly transition to work as the fusion healed. Petitioner was instructed to follow up in approximately eight to 12 weeks.

Petitioner followed up with Dr. Sampat on March 25, 2022. Px3 at 160. Dr. Sampat noted that Petitioner had three physical therapy sessions and that she felt safe to return to work. Dr. Sampat noted that Petitioner was applying for new jobs because she had been let go from her previous job. Dr. Sampat noted that Petitioner was doing well and was improved after surgery. Petitioner testified that she began looking for jobs in March 2022, after Dr. Sampat told her she could return to work. Tr. at 30. Petitioner found a job with Providence Life Services at its Victorian Village facility in June 2022. Tr. at 30.

Petitioner attended 23 sessions of physical therapy at GoodLife Physical Therapy between December 22, 2021 and April 13, 2022. Px4 at 206-273.

Petitioner again saw Dr. Sampat on July 1, 2022, at which time Petitioner reported 50-percent improvement in the tingling down the arm. Px3 at 159.

Petitioner testified that on August 3, 2022, while working at Victorian Village for Providence Life Services, corporate was conducting training, “and she was demonstrating if a patient were to grab you, and she grabbed my shoulders and shook me, and I jumped back and said stop.” Tr. at 31. Petitioner testified that the right side of her body was injured at that time, including the right side of her neck. Tr. at 31. Petitioner testified that this incident did not change anything with respect to the left side. Tr. at 31-32. Petitioner attended physical therapy following this incident. Tr. at 32.

Petitioner was seen by Dr. Sampat on August 5, 2022. Px3 at 157-158. Dr. Sampat noted that Petitioner was doing very well after surgery and had returned to work as a registered nurse at Victorian Village on a full duty basis and was doing mostly administrative work. Dr. Sampat noted that on August 4, 2022, Petitioner had a training session for gait belt use when another employee suddenly took her and shook her left arm and neck to simulate abnormal use of the gait belt. There was subsequent onset of neck pain and new tingling in the right lateral arm and dorsal forearm. Petitioner also had neck and periscapular pain. X-rays of the cervical spine were obtained and demonstrated a healing fusion and well-positioned surgical hardware C4-7. Dr. Sampat noted that he did not see any hardware loosening, migration, or any other periprocedural complications. Dr. Sampat ordered a cervical spine MRI and prescribed a Medrol Dosepak and Flexeril. Dr. Sampat released Petitioner to work light office duties with no lifting greater than 10 pounds and avoid training exercises or sudden manipulation of the cervical spine.

On August 12, 2022, Petitioner was seen by Connor Shaw, APN, at Parkview Orthopaedic Group, for reevaluation of cervical pain that radiated down the right upper extremity. Px3 at 154-155. It was noted that Petitioner’s pain was worsening. It was noted that the pain was aggravated with head rotation, flexion, and neck extension. Petitioner was kept off work.

Petitioner underwent a cervical spine MRI on August 15, 2022 at Homer Glen Imaging, which demonstrated (1) previous surgery obscuring the details of C4, C5, C6, and C7 vertebral bodies and the intervening discs, (2) no significant cord compression or focal changes in the cord, and (3) neuroforaminal stenosis at C5-6 and on the left side C3-4 levels. Px3 at 214-215.

On August 19, 2022, Dr. Sampat noted that Petitioner was doing well following surgery, however, she returned to work on a full duty basis and reinjured herself with repetitive bending, lifting, and twisting. Px3 at 152. Dr. Sampat noted that Petitioner had training type of work which aggravated some of her symptoms. Dr. Sampat noted that Petitioner was improved overall but recommended starting with full duties at work for four-hour shifts, five days a week.

Petitioner followed up with Dr. Sampat on October 14, 2022, at which time Dr. Sampat noted that Petitioner was feeling better and that she felt safe to return to work full duty on a trial basis. Px3 at 151. Dr. Sampat released Petitioner to return to work full duty on a trial basis on October 17, 2021, noting that if she was able to tolerate work, then she would be deemed at maximum medical improvement (“MMI”).

Petitioner returned to Dr. Sampat on November 11, 2022. Px3 at 149. Petitioner reported that she was feeling better, that she had returned to work full duty, and that she was able to tolerate the work. Petitioner reported that overall, her neck pain had improved markedly. Dr. Sampat placed Petitioner at MMI, while noting that Petitioner’s pain and symptoms had improved.

Petitioner's Current Condition

At the time of arbitration, Petitioner was working as a registered nurse for Providence Life Services at its Victorian Village in Homer Glenn, Illinois. Tr. at 12, 40. Petitioner works eight-and-a-half hours a day. Tr. at 40. Petitioner earns about the same hourly rate at Providence Life Services compared to what she was earning at Respondent, if it would have included raises over the years that she was there. Tr. at 41.

Petitioner testified that at the time of arbitration she still experienced symptoms in the left side of her neck and left upper extremity. Tr. at 32. Petitioner testified that at night, she has to take Celebrex, an NSAID, or ibuprofen and has to sleep with different pillows. Tr. at 32, 40-41. Petitioner testified that she did not have to take medication for pain on a daily basis prior to the accident, but that it helps to keep the achiness and pain at bay. Tr. at 32. Petitioner does stretches in the morning after waking up. Tr. at 32. Petitioner cannot shop for groceries like she used to and her husband unloads the heavy items. Tr. at 32. Petitioner testified that prior to the accident, she was able to do more of the heavy lifting and put away heavy pots and pans. Tr. at 32-33. She avoids tasks, such as changing light bulbs, because reaching above causes pain and discomfort. Tr. at 33. She cannot wash her 90-pound labrador and she cannot walk him on days where he is particularly ornery because she is afraid that he will jerk her and she uses her left hand on the harness to hold him back. Tr. at 33.

Regarding work, Petitioner testified that she was moved to assisted living knowing that it would be physically easier, but that she cannot lift or turn patients like she used to and she cannot work the hours or length of days like she used to. Tr. at 33. Petitioner used to be able to work double shifts and work five or six days prior to the accident, but she cannot physically handle that anymore. Tr. at 33. Petitioner testified that she cannot do long car rides because she starts to get pain and has to get up and walk around. Tr. at 34. Petitioner testified that she is afraid to do a lot of things she used to because of fear of reinjury and because she wants to keep working. Tr. at 34. Petitioner testified that at the time of arbitration, she was 75-percent improved. Tr. at 35. Petitioner does home therapy. Tr. at 35. Petitioner experiences good and bad days. Tr. at 42.

Evidence Deposition Testimony of Dr. Chintan Sampat

Dr. Sampat testified by way of evidence deposition taken on March 15, 2022. Px1. Dr. Sampat testified as to his education and credentials as a board-certified orthopedic surgeon with a focus on treating conditions of the spine. Px1 at 5-7, 20-21.

Dr. Sampat saw Petitioner for the first time on April 30, 2021. Px1 at 8, 21. Petitioner was referred to Dr. Sampat by his partner, Dr. Henry Fuentes, for neck pain radiating down her left upper extremity. Px1 at 8, 22. Dr. Sampat understood that Petitioner was seeing Dr. Fuentes because she had an injury while working as a nurse with initial pain in the neck and shoulder area radiating down the arm and Dr. Fuentes had treated Petitioner for shoulder issues, but the pain persisted. Px1 at 8. Dr. Sampat testified that further workup showed that some of Petitioner's problems were coming from the neck, which is not unusual. Px1 at 8. Dr. Sampat reviewed the cervical spine MRI, which showed cervical spinal stenosis and a disc herniation with narrowing from C4 to C7, causing the narrowing of the nerves and pain down her arm. Px1 at 9. Dr. Sampat reviewed the EMG findings, which confirmed objective findings of cervical radiculopathy causing the symptoms going down her left arm. Px1 at 9. Dr. Sampat's diagnosis at that time was cervical radiculopathy. Px1 at 10. Dr. Sampat gave Petitioner pain medications and referred her to pain management for a cervical epidural steroid injection. Px1 at 10-11. Dr. Sampat testified that Petitioner experienced only minimal relief following the cervical epidural steroid injection. Px1 at 11. Because Petitioner experienced only minimal relief, Dr. Sampat recommended an anterior cervical discectomy and fusion. Px1 at 12. Dr. Sampat kept Petitioner off work. Px1 at 12-13.

Dr. Sampat reviewed Dr. Singh's IME report and he disagreed with Dr. Singh's opinions that Petitioner had a cervical strain and that she was at MMI. Px1 at 13-14. Dr. Sampat testified that he felt that Petitioner's symptoms were related to the work injury because she did not have those type of symptoms before the work injury and she became asymptomatic after the work injury. Px1 at 14, 16. Dr. Sampat testified that there appeared to be a temporal relationship between the onset of symptoms and Petitioner's complaints and work injury. Px1 at 14, 16. Dr. Sampat performed a C4-7 anterior discectomy and fusion on December 2, 2021. Px1 at 15. The numbness and tingling in Petitioner's arm improved following the surgery. Px1 at 15. Dr. Sampat testified that it takes one year for the nerves to get back to as good as they are going be. Px1 at 15. Dr. Sampat testified that he believes that the symptoms emanating from the C4-7 stenosis and the objective findings are related to her work injury. Px1 at 16. Dr. Sampat explained that the basis for his opinion was that Petitioner was functioning well before the work injury, she did not have numbness and tingling down the arm before the work injury, the injury described is a competent cause of onset of cervical radiculopathy, and she had subjective and very objective findings of cervical radiculopathy after the work injury that persisted. Px1 at 16. Dr. Sampat believed that the C4-7 anterior cervical discectomy and fusion was necessitated by the work injury. Px1 at 16-17.

Dr. Sampat testified that Petitioner's arm pain was better the day after surgery. Px1 at 18. Dr. Sampat testified that he usually has patients in postoperative therapy for 12 weeks. Px1 at 18. Petitioner continued to be off work at the time of Dr. Sampat's deposition. Px1 at 18. Dr. Sampat typically keeps patients off work for 12 to 16 weeks following surgery. Px1 at 18.

On cross examination, Dr. Sampat testified that Petitioner was referred to him by Dr. Diana Burda, a primary care physician, as well as Dr. Fuentes. Px1 at 22. Dr. Sampat reviewed the MRI images, the EMG, Dr. Fuentes' last note, and Dr. Glantz's April 23, 2021 note prior to seeing Petitioner on April 30, 2021. Px1 at 22-23. Dr. Sampat agreed that prior to May 21, 2021, it was his intent to exhaust all nonsurgical options before exploring surgery in treating Petitioner. Px1 at 23. Dr. Sampat testified that as of May 21, 2021, all reasonable nonoperative treatment options had been ruled out and at that point, Petitioner had to live with her symptoms or pursue surgical intervention. Px1 at 23-24. Dr. Sampat agreed that as of May 21, 2021 he had assessed that there was a causal relationship between the Petitioner's condition and the work injury. Px1 at 25. Dr. Sampat testified that Petitioner's reported history, the EMG findings, the MRI findings, Petitioner's subjective complaints supporting the objective physical examination findings, and Petitioner being utterly better the day after surgery were all objective evidence supporting an acute injury versus a chronic condition. Px1 at 26-27.

Evidence Deposition Testimony of Dr. Kern Singh

Dr. Singh testified by way of evidence deposition taken on October 19, 2022. Respondent's Exhibit ("Rx") 4. Dr. Singh testified as to his education and credentials as a board-certified orthopedic surgeon with his practice exclusive to treating patients with spinal disorders. Rx4 at 5-6; Rx3 at 4.

Dr. Singh performed a medical evaluation of Petitioner on May 20, 2021 and produced a report detailing his exam findings. Rx4 at 6. Dr. Singh reviewed some of Petitioner's medical records in preparation of his examination. Rx4 at 8-9. Dr. Singh testified that the only thing he found on exam was that pain was produced when raising Petitioner's shoulder or abducting it and then externally rotating it. Rx4 at 8. Based upon the history, his review of medical records, and Petitioner's diagnosis, Dr. Singh's diagnoses were cervical muscular strain and degenerative cervical spondylosis. Rx4 at 9. Dr. Singh testified that Petitioner had subjective complaints of neck pain and no neurological deficits, and therefore, he felt that Petitioner had a soft tissue strain. Rx4 at 9. Dr. Singh believed that four weeks of physical therapy was appropriate and reasonable treatment for the soft tissue strain. Rx4 at 10. Dr. Singh did not believe that any further treatment was necessary

at that time. Rx4 at 10. Dr. Singh believed that Petitioner had reached MMI approximately four weeks from the time of the work injury. Rx4 at 10-11. Dr. Singh provided an AMA impairment rating of zero. Rx4 at 11.

On cross examination, Dr. Singh agreed that Petitioner suffered a cervical spine injury as a result of the work injury. Rx4 at 12. At the time of his October 19, 2022 deposition, Dr. Singh had not reviewed any medical records since his May 20, 2021 examination. Rx4 at 12. He had not reviewed any medical records of Dr. Sampat. Rx4 at 12. Dr. Singh testified that there was mention in Dr. Fuentes' notes of cervical radiculopathy and a referral for an EMG and a referral to Dr. Sampat. Rx4 at 12-13. Dr. Singh did not review the EMG prior to his May 20, 2021 examination. Rx4 at 13. Dr. Singh thought that Petitioner's symptoms were appropriate to her examination. Rx4 at 13. Dr. Singh did not know if Petitioner had ever had surgery to her cervical spine. Rx4 at 14.

Dr. Singh also testified by way of evidence deposition taken on October 30, 2024. Rx3. Dr. Singh performed a medical evaluation of Petitioner on July 20, 2023 and produced a report detailing his examination findings. Rx3 at 6. Dr. Singh reviewed Petitioner's medical records in preparation of his examination, including Dr. Sampat's medical records. Rx3 at 6-7. Dr. Singh testified that Petitioner had a normal examination on July 20, 2023. Rx3 at 7. Dr. Singh's diagnosis at that time was status post anterior cervical fusion from C4-7. Rx3 at 7. Dr. Singh testified that Petitioner's current cervical spine condition did not have any causal connection to the work injury. Rx3 at 7-8. Dr. Singh placed Petitioner at MMI. Rx3 at 8. Dr. Singh agreed that at the time of his July 20, 2023 examination he opined that Petitioner required no further treatment. Rx3 at 8. Dr. Singh testified that Petitioner had no subjective complaints relative to the cervical spine at the time of his July 20, 2023 examination. Rx3 at 8. Dr. Singh testified that based on his July 20, 2023 examination, Petitioner did not require any permanent work restrictions relative to the cervical spine. Rx3 at 9.

On cross examination, Dr. Singh agreed that he was asked to provide an AMA impairment rating as part of his July 20, 2023 examination. Rx3 at 9. Dr. Singh agreed that an AMA impairment rating does not equate to disability, and that his opinions are based on Petitioner's impairment and not her disability. Rx3 at 9-10. Dr. Singh did not use the digital Guides to Evaluation of Permanent Impairment, Sixth Edition, and he was not aware that there was a digital version. Rx3 at 10-11. Dr. Singh agreed that he gave an impairment rating relative to his diagnosis of a cervical strain. Rx3 at 11.

Evidence Deposition Testimony of Dr. Craig Phillips

Dr. Phillips testified by way of evidence deposition taken on September 4, 2024. Rx7. Dr. Phillips testified as to his education and credentials as a board-certified orthopedic surgeon with a certificate of added qualification in hand surgery. Rx7 at 5-7.

Dr. Phillips performed a medical evaluation of Petitioner on February 16, 2021 and produced a report detailing his findings. Rx7 at 8. Petitioner provided Dr. Phillips with a history. Rx7 at 8-13. Dr. Phillips reviewed some medical records in preparation of his evaluation, which were consistent with the medical history provided by Petitioner. Rx7 at 13-14. Dr. Phillips performed a physical examination of Petitioner. Rx7 at 14-18. Based on Petitioner's history, his review of medical records, and physical examination, Dr. Phillips' diagnosis was two months status post left shoulder arthroscopy with debridement and decompression. Rx7 at 18. Dr. Phillips testified that he thought that Petitioner was doing appropriately and well with regards to her left shoulder. Rx7 at 18. Dr. Phillips opined that Petitioner's left shoulder condition was causally related to the work injury. Rx7 at 18. Dr. Phillips testified that at the time of his examination, Petitioner was not at MMI and that he suggested that she continue physical therapy for her left shoulder for an additional six weeks, as well as a home exercise program. Rx7 at 18-19.

Dr. Phillips performed another medical evaluation of Petitioner on December 31, 2023 and produced a report detailing his findings. Rx7 at 19. Dr. Phillips reviewed additional medical records in preparation of his evaluation Rx7 at 19-20. Dr. Phillips performed a physical examination at that time and Petitioner's shoulder was functioning normally. Rx7 at 21. Based on his review of additional medical records and physical examination findings, there were not any changes to his diagnosis or causal opinion relative to Petitioner's left shoulder. Rx7 at 21. Dr. Phillips testified that at the time of his December 31, 2023 evaluation, Petitioner was at MMI as to her left shoulder. Rx7 at 21-22. Dr. Phillips testified that Petitioner was working at the time of his December 31, 2023 evaluation, and that she told him that she used the CNAs a little more, but that she could do all her activities post-surgery with being a nurse without difficulty. Rx7 at 22. Dr. Phillips provided an AMA Impairment Rating of zero residual impairment relative to Petitioner's left shoulder. Rx7 at 22-24.

On cross examination, Dr. Phillips agreed that Petitioner's left shoulder condition is causally related to the work injury and that all the treatment she underwent for the left shoulder was reasonable, necessary, and related to the work injury. Rx7 at 25. Dr. Phillips agreed that impairment does not equate to disability and that his opinions are based on Petitioner's impairment, not disability, though both can be related. Rx7 at 25. Dr. Phillips did not use the digital version of the Guides to the Evaluation of Permanent Impairment, Sixth Edition, and he was not aware that effective January 1, 2023, the AMA considers the digital version to be the most recent edition to be used. Rx7 at 26-27

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). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing and finds her 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:

The Parties stipulate that on March 24, 2020, Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent. Ax1 at No. 2.

Having considered all the evidence, the Arbitrator finds that Petitioner's current left arm, left shoulder, and cervical spine conditions of ill-being are causally related to the March 24, 2020 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Physicians Immediate Care, (2) the records of

Parkview Orthopaedic Group and the testimony of Dr. Chintan Sampat, (3) the fact that none of the records in evidence reflect that Petitioner was actively treating for a left arm, left shoulder, or cervical spine condition immediately prior to March 24, 2020, (4) Petitioner's credible denial of any pre-accident physical issues or treatment of her left arm, left shoulder, or cervical spine, and (5) Petitioner's credible testimony regarding the mechanism of injury and the abrupt onset of symptoms following the injury. The Arbitrator notes that overall, the record demonstrates (1) that Petitioner was in condition of good health immediately prior to March 24, 2020, (2) that Petitioner was able to work full duty and without restrictions immediately prior to the work accident, and (3) consistent complaints and persistent symptoms of the left arm, left shoulder, and cervical spine following the March 24, 2020 injury. The Arbitrator notes that there is no evidence of any reinjury or other intervening event that would sever the chain of causation.

Regarding Petitioner's left arm, the Arbitrator notes that Petitioner underwent minimal treatment to the left elbow for the diagnosis of lateral epicondylitis after the March 24, 2020 injury, including an MRI on May 5, 2020 and a cortisone injection administered on July 23, 2020. The medical evidence demonstrates that left elbow symptoms were last documented on or about February 23, 2021. The Arbitrator notes that the medical evidence regarding Petitioner's left arm condition of ill-being is un rebutted. Accordingly, the Arbitrator finds causation for Petitioner's left arm condition of ill being as to the need for the minimal treatment received after the March 24, 2020 work accident, however, the Arbitrator does not view this condition or minimal treatment for this condition as significantly contributing to Petitioner's current disability.

Regarding Petitioner's left shoulder, the Arbitrator notes that Dr. Phillips agrees that Petitioner's left shoulder condition of ill-being is causally related to the March 24, 2020 injury, and that the treatment rendered for the left shoulder was reasonable, necessary, and related to the March 24, 2020 injury.

Regarding Petitioner's cervical spine, the Arbitrator has considered the opinions of Dr. Singh and finds that they do not outweigh the opinions of Dr. Sampat, which are consistent with and supported by the overall medical evidence. The Arbitrator notes that Petitioner experienced ongoing and consistent complaints and symptoms of the cervical spine following the March 24, 2020 injury, which Dr. Singh's opinions fail to explain. Moreover, the Arbitrator notes that in his February 16, 2021, Dr. Phillips opined that Petitioner's symptoms of persistent pain over the medial parascapular area radiating down the arm and up into the neck were possibly related to C5 radiculopathy. Rx5. The Arbitrator further notes that Petitioner experienced improvement in cervical spine symptoms following the C4-5, C5-6, and C6-7 anterior cervical discectomy and fusion with anterior cervical plating, use of allograft bone.

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:

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px6, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including such payments reflected in Rx8.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits from June 21, 2020 through March 25, 2022. Ax2. Respondent disputes Petitioner's claim and claims "through Dr. Singh's MMI finding." Ax2.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that the overall medical evidence supports an award of TTD benefits for the period of June 21, 2020 through March 25, 2022. Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 21, 2020 through March 25, 2022.

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of \$23,856.74 for TTD benefits paid to Petitioner. Ax1 at No. 9.

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

The Arbitrator notes that pursuant to Section 8.1b of the Act, permanent partial disability shall be established using five enumerated factors, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the factors to be considered include: (i) the reported level of impairment pursuant to AMA; (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.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that an AMA Impairment Rating was rendered by Dr. Phillips, as to the left shoulder, and by Dr. Singh, as to the cervical spine. Dr. Phillips provided an impairment rating of zero. Dr. Singh provided an impairment rating of zero. The Arbitrator notes that these levels of impairment do not necessarily equate to permanent partial disability under the Act, and are instead, a factor to be considered in making such a disability evaluation. The Arbitrator also notes that she has found that Dr. Singh's opinions do not outweigh the opinions of Dr. Sampat. The Arbitrator assigns moderate weight to this factor.

With regard to Subsections (ii) and (iii) of Section 8.1b(b), the Arbitrator notes that at the time of the accident, Petitioner was 47 years of age and was employed at Respondent as a registered nurse. The evidence demonstrates that while Petitioner did not return to work at Respondent as a registered nurse, she returned to work as a registered nurse at Providence Life Services at its Victorian Village in Homer Glenn, Illinois. The Arbitrator notes that at the time of arbitration, Petitioner continued to work as a registered nurse at Victorian Village. The Arbitrator assigns some weight to these factors.

With regard to Subsection (iv) of Section 8.1b(b), the Arbitrator notes that Petitioner has not demonstrated that her future earning capacity has been affected by the accident and there is no evidence of reduced earning capacity in the record. The Arbitrator assigns less weight to this factor.

With regard to Subsection (v) of Section 8.1b(b), the medical records reflect that following the March 24, 2020 injury, Petitioner was diagnosed with a left partial thickness rotator cuff tear, possible left SLAP tear, left lateral epicondylitis, and C6-7 cervical radiculopathy. For the left elbow, Petitioner underwent minimal treatment, including a cortisone injection on July 23, 2020, and the Arbitrator does not view this condition or minimal treatment for this condition as significantly contributing to Petitioner's current disability. For the left shoulder, Petitioner underwent a cortisone injection on May 21, 2020 and a left shoulder arthroscopy with subacromial decompression with partial acromioplasty on December 16, 2020, as well as pre-and post-surgical physical therapy. The Arbitrator notes that Petitioner's postoperative diagnosis was impingement syndrome. For the cervical spine, Petitioner underwent an epidural steroid injection at C6-7 on May 13, 2021 and a C4-5, C5-6,

and C6-7 anterior cervical discectomy and fusion with anterior cervical plating and use of allograft bone, as well as post-operative physical therapy. The Arbitrator notes that Petitioner subsequently returned to full-duty work as a registered nurse, however, Petitioner testified that she can no longer work double shifts or five to six days per week and cannot lift or turn patients like she used to. Petitioner also testified that she still experiences symptoms in her neck and left upper extremity. She takes pain medication at night. Petitioner testified that there are things she has difficulty with, including lifting heavy grocery items, putting away pots and pans, changing a light bulb, and washing and walking her 90-pound labrador. Petitioner testified that at the time of arbitration she was 75-percent improved.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that as to her left shoulder, Petitioner sustained permanent partial disability to the extent of 12.5% loss of the person-as-a-whole, pursuant to Section 8(d)2 of the Act, and that as to her cervical spine, Petitioner sustained permanent partial disability to the extent of 25% loss of the person-as-a-whole, pursuant to Section 8(d)2 of the Act.



ANA VAZQUEZ, ARBITRATOR

April 28, 2025

26IWCC0013

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005684
Case Name	Gabriel Calderon v. AAMRO Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0014
Number of Pages of Decision	26
Decision Issued By	Stephen Mathis, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Eduardo Salgado
Respondent Attorney	Paul Krauter

DATE FILED: 1/23/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gabriel Calderon,

Petitioner,

vs.

NO. 24 WC 005684

AAMRO Corporation,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 9, 2025, is hereby affirmed and adopted.

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

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

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

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

January 23, 2026

SJM/sj

o-11/25/2025

44

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

DISSENT

I partially concur in the majority's decision affirming and adopting the Arbitrator's decision. I respectfully dissent from the majority's opinion finding the medical treatment by Dr. Chhadia at South Suburban Orthopedics was medically reasonable and necessary. I would therefore modify the Arbitrator's decision to deny compensation for the medical bills from this provider and affirm all else.

Petitioner received conservative treatment at Concentra and then began treating with Dr. Kevin Tu at Concentra for orthopedic care. Dr. Tu eventually recommended surgery, after which Petitioner began treating with Dr. Ankur Chhadia at Suburban Orthopedics. As a general matter, claimants are entirely within their rights to seek a second opinion, and they may transition their care to second choice physician. 820 ILCS 305/8(a). In this case, however, Petitioner continued treating with Dr. Tu and concurrently treated with Dr. Chhadia, who also eventually recommended surgery. At trial, Petitioner testified he wanted to pursue the surgery that was recommended by both Dr. Tu and Dr. Chhadia, without giving any preference for which orthopedic surgeon he wanted to perform the surgery. Because Dr. Chhadia provided duplicative orthopedic care, it was medically unnecessary and unreasonable, and consistent with prior

decisions at this Commission addressing duplicative treatment services, medical benefits should be denied for Dr. Chhadia's services.

Petitioner initially received treatment at Concentra on July 31, 2023, where he was evaluated by a physician assistant. Petitioner received physical therapy and then came under the care of Dr. Vlahos. On August 29, 2023, Dr. Vlahos ordered an MRI which Petitioner underwent on September 27, 2023. The MRI showed AC joint edema, rotator cuff tendinosis involving the supraspinatus, infraspinatus, and subscapularis tendons without a definite tear, superior labral degeneration, biceps tendinosis, and a humeral head lesion interpreted as a probable enchondroma. (PX1 at 9) On October 3, 2023, Dr. Vlahos recommended an orthopedic evaluation. (PX1 at 6, 8)

Petitioner presented to Dr. Kevin Tu at Concentra on October 26, 2023. (PX1 at 1-3) Dr. Tu noted Petitioner was being seen at the request of Dr. Vlahos. Dr. Tu diagnosed AC joint arthropathy and shoulder impingement. Dr. Tu administered an injection into the shoulder. Petitioner continued attending physical therapy at Concentra. Dr. Tu reevaluated Petitioner on November 30, 2023, and noted the injection provided temporary relief, followed by worsening symptoms. Dr. Tu further noted Petitioner had been enrolled in a physical therapy program and had failed conservative treatment. Dr. Tu recommended a right shoulder arthroscopic subacromial decompression and distal clavicle excision. (PX1 at 232) While waiting for authorization, Petitioner saw Dr. Tu on December 7, 2023, and January 11, 2024.

At Respondent's request, Dr. Garrigues performed a medical records review and authored a report dated February 12, 2024. (RX1) Dr. Garrigues diagnosed pre-existing degenerative AC joint osteoarthritis, and although symptomatic while at work, it was his opinion the condition had not been worsened or exacerbated by Petitioner's employment. (RX1 at 7).

Petitioner returned to Dr. Tu for follow-up visits on February 15, 2024 and April 4, 2024. Dr. Tu continued to recommend surgery. (PX1 at 186)

Dr. Garrigues then performed a section 12 physical examination of Petitioner on April 9, 2024. (RX1.) Dr. Garrigues recommended an injection and continued exercises, with surgery being the next step should conservative treatment fail. (RX1 at 16) Dr. Garrigues' opinion regarding the lack of a causal connection with Petitioner's employment remained unchanged.

On May 6, 2024, Petitioner sought treatment with Dr. Chhadia at Suburban Orthopedics. (PX2 at 40-41) Petitioner provided a consistent history describing an overuse injury at work. Petitioner reported he received treatment at Concentra and underwent a shoulder injection. Petitioner further reported he attended seven therapy sessions and underwent an MRI ordered by Dr. Vlahos at Concentra. Petitioner also advised Dr. Chhadia he saw Dr. Garrigues for an IME. The Arbitrator characterized Petitioner's evaluation with Dr. Chhadia as a second opinion consultation; however, there was no mention of Dr. Tu in the documented history and there was nothing contained in Dr. Chhadia's initial visit evaluation notes to suggest Petitioner presented

for a second opinion. Notably, there was no mention of any prior recommendation for surgical intervention. Unaware of Dr. Tu's prior involvement, Dr. Chhadia did not request his medical records and he was unaware that Dr. Tu had previously determined Petitioner had failed conservative treatment. Dr. Chhadia prescribed physical therapy and administered an injection into the shoulder. (PX2 at 40-41) As found by the Arbitrator, Petitioner commenced physical therapy at La Clinica.

Dr. Chhadia supplemented his treatment note with an addendum noting he reviewed the IME report and commenting that the doctor agreed with his diagnosis and had recommended an injection. Dr. Chhadia indicated he disagreed with the IME doctor regarding causation. (PX2 at 42) Dr. Garrigues' report summarized the treatment visits at Concentra and mentioned Dr. Tu's treatment visits on October 26, November 30, December 7, 2023, and January 11, 2024. (RX1) Dr. Garrigues' report noted that Dr. Tu had recommended surgery on November 30, 2023. It is unknown whether Dr. Chhadia carefully read the IME report in its entirety or simply scanned the report to ascertain Dr. Garrigues' opinions.

While undergoing therapy, Petitioner returned to Dr. Tu on May 16, 2024. (PX1 at 247-248) Dr. Tu reviewed the IME report and he too expressed his disagreement with Dr. Garrigues regarding causation. Dr. Tu further noted Petitioner was not interested in another injection and that Petitioner wished to undergo his recommended surgery. (PX1 at 248) There was no mention of Petitioner's consultation with Dr. Chhadia and no mention of the second injection performed by Dr. Chhadia.

Petitioner returned to Dr. Chhadia on June 3, 2024, with continuing shoulder pain. (PX2 at 48) Petitioner reported the injection administered by Dr. Chhadia provided 50% relief which lasted approximately 3-4 weeks. Petitioner demonstrated full range of motion but Dr. Chhadia noted an audible "cracking" with motion. Dr. Chhadia recommended continued therapy and directed Petitioner to return for follow-up in four weeks.

On June 3, 2024, Petitioner underwent an MR arthrogram. The ordering provider was listed as Ronnie Mandal. The MR arthrogram confirmed the diagnoses for rotator cuff and biceps tendinosis and further showed interstitial tears and articular surface tear involving the supraspinatus and subscapularis and partial tears involving the anterior and posterior labrum. (PX2 at 44-45)

On July 1, 2024, Petitioner returned to Dr. Chhadia for follow-up. (PX2 at 53) Dr. Chhadia noted Petitioner was attending therapy twice weekly with some improvement. There was no indication in the office visit note that Dr. Chhadia was aware of the MR arthrogram. Dr. Chhadia recommended additional therapy for 4-6 weeks and directed Petitioner to return in four weeks for follow-up. (PX2 at 53-54)

Petitioner then saw Dr. Tu on July 18, 2024, and Dr. Chhadia on July 29, 2024. (PX1 at 250, PX2 at 58) There was nothing documented to suggest that Dr. Tu was aware of Dr.

Chhadia's involvement, and conversely, there was nothing documented to suggest that Dr. Chhadia was aware of Dr. Tu's continuing treatment. Dr. Tu noted Petitioner still wanted to undergo his recommended surgery. (PX1 at 251)

Petitioner next saw Dr. Chhadia on August 26, 2024, and Dr. Tu on September 19, 2024. (PX2 at 64, PX1 at 253) Dr. Chhadia continued to prescribe therapy, and Dr. Tu continued to recommend surgery and noted he was trying to secure authorization.

On October 9, 2024, Dr. Chhadia reevaluated Petitioner and noted Petitioner had been attending physical therapy twice weekly with "minimal relief." (PX2 at 71) Dr. Chhadia finally determined surgical intervention was "indicated and appropriate" and recommended subacromial decompression, debridement, biceps tenodesis, and distal clavicle excision. (PX2 at 71, 73)

Petitioner next saw Dr. Chhadia for a telemedicine follow-up on November 7, 2024, and Dr. Tu on December 19, 2024. (PX2 at 77, PX1 at 254) Both Dr. Chhadia and Dr. Tu indicated they were trying to secure authorization for surgery.

Petitioner requested a hearing under section 19(b) seeking compensation for medical expenses, TTD, and prospective medical. As mentioned above, I partially concur with the majority's decision affirming and adopting the Arbitrator's decision awarding TTD benefits, medical expenses, and prospective medical benefits for the surgery as recommended by both Dr. Tu and Dr. Chhadia. I would, however, deny compensation for the medical bills of Dr. Chhadia.

Under Section 8(a) of the Act, claimants are entitled to receive medical benefits "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred" so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a). The claimant has the burden of proving that the medical services were necessary and the expenses incurred were reasonable. *City of Chicago vs. Illinois Workers' Comp. Comm'n*, 409 Ill. App. 3d 258, 947 N.E.2d 863 (2011). Questions as to the reasonableness of medical charges and the necessity of the medical services provided are questions of fact to be resolved by the Commission. *Lewis vs. Illinois Workers' Compensation Comm'n*, 2021 IL App (5th) 200302WC-U, at P117. This Commission has previously denied compensation for medical expenses based on duplicative treatment. See *Farris vs. Archer Daniels Midland Co.*, 00 IIC 0843; 2000 Ill. Wrk. Comp. LEXIS 507 ("The Commission finds that the treatment rendered by Dr. Buescher to be duplicative in light of the fact that Petitioner was also seeking medical treatment from Dr. Hoffman.") See also, *Jones vs. American Steele Foundries*, 19 IWCC 2591; 2019 Ill. Wrk. Comp. LEXIS 690 (chiropractic expenses denied because same-day chiropractic treatments and therapy sessions were duplicative and therefore unreasonable and unnecessary). I would find the treatment rendered by Dr. Chhadia to be duplicative, as Petitioner began treating with Dr. Chhadia after Dr. Tu had already recommended surgery after finding Petitioner failed conservative treatment, and Petitioner continued treating with Dr. Tu while concurrently treating with Dr. Chhadia.

Based on the foregoing, I would find Petitioner failed to prove the medical treatment he received with Dr. Chhadia was medically reasonable and necessary. Accordingly, I would deny benefits for the medical expenses incurred with this provider. I therefore respectfully dissent.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

January 23, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005684
Case Name	Gabriel Calderon v. AAMRO Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Eduardo Salgado
Respondent Attorney	Paul Krauter

DATE FILED: 4/9/2025

/s/William McLaughlin, 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)

Gabriel Calderon

Employee/Petitioner

v.

AAMRO Corporation

Employer/Respondent

Case # **24** WC **005684**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **February 11, 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, **7/28/2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$26,109.20**; the average weekly wage was **\$502.10**.

On the date of accident, Petitioner was **53** years of age, *married* with **1** dependent children.

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

Respondent shall be given a credit of **\$2,215.05** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$2,215.05**.

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

ORDER***Temporary Total Disability***

Respondent shall pay Petitioner temporary total disability benefits of \$456.04/week for 57 2/7 weeks, commencing 1/18/2024 through 2/11/2025, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of **\$137.46** to Illinois Orthopedic Network, **\$4,750.00** to MedLegal Associates, **\$5,586.00** Suburban Orthopaedics, **\$7,797.82** to Midwest Specialty Pharmacy, **\$26,779.40** to LaClinica, and **\$350.26** to Concentra Medical Center, as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical

Respondent shall authorize prospective medical for Petitioner consisting of surgery as recommended by Dr. Kevin Tu and Dr. Ankur Chhadia, consisting of a right shoulder arthroscopic subacromial decompression with debridement, biceps tenodesis, and distal clavicle excision.

Credits

Respondent shall be given a credit of **\$2,215.05** for previously issued TTD from 7/28/2023 through 1/27/2024 for a total credit of **\$2,215.05**.

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

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

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of dots and a long, sweeping horizontal line.

APRIL 9 2025

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT

Petitioner, Gaberial Calderon, testified that on Friday, July 28, 2023, he suffered an accident while working for the Respondent. (Tr. 16) Petitioner testified a few days before July 24, 2023, production supervisor Jaime Carmona, tasked him with a new job outside of his regular polishing department. (Tr.13). Petitioner testified that the new task required him to take heavy dirty cuts of spare metal parts and place them in a bin to have them cleaned. Petitioner testified that once the bin was filled it weighed approximately 50-70lbs. The Petitioner testified that he would next have to lift the bin and take it to the blasting machine to load. According to the Petitioner's testimony he would repeat this process until the sand blasting machine was filled. Once filled, the Petitioner stated he would reach above his head and pull on a chain to manually close the machine's door. (Tr.14).

Petitioner testified that when the machine completed cleaning the metal scraps, he would have to open the door of the machine and load the clean pieces of metal scraps back into a clean bin. Petitioner testified that once the clean parts were placed into a clean bin he would restart the process over again by loading a new bin with dirty metal scraps. (Tr. 14,15). Petitioner worked in this capacity in eight-hour shifts, from July 24, 2023, until July 28, 2023. (Tr. 15,16).

While working in this task Petitioner started feeling pain and discomfort in his right shoulder. (Tr. 16). By the end of the week the Petitioner indicated his shoulder was hurting a lot from working and as a result, Petitioner reported his symptoms to his supervisor Jaime Carmona. (Tr. 16). Petitioner advised Mr. Carmona that he would like to leave early and take half a day given the pain in his shoulder. (Tr. 16) Over the weekend, the Petitioner testified that the pain in his shoulder became unbearable. (Tr. 16). Upon his return to work on Monday, July 31, 2023, Petitioner reported his accident to Mr. Carmona, who referred him to Concentra Medical Center. (Tr. 16-17).

Medical Treatment

On July 31, 2023, the record reflects Petitioner was seen by Concentra Medical Center at the direction of the Respondent. (PX1 at 172-178). Petitioner reported having sustained a work injury on July 28, 2023, while lifting heavy boxes. (PX1 at 175). Petitioner's reported symptoms consisted of right shoulder pain with popping, and he was diagnosed with sustaining a right shoulder strain. Petitioner was given restrictions consisting of lifting no more than 5 lbs., no pushing or pulling over 5lbs., no reaching above

shoulders or head, and no use of power, impact or vibratory tools with the right upper extremity. (PX1 at 176,177).

Petitioner was seen by Concentra Medical Center on August 2, 2023. Again, the Petitioner reported a workplace injury occurring on July 28, 2023, while lifting heavy boxes at work. The petitioner reported pain to his right shoulder had improved but he continued to feel his right shoulder popping. As a result, the Petitioner was recommended to start physical therapy, continue with light duty restrictions, prescribed medication and was further advised to follow up with Concentra Medical Center. (PX1 at 156-157).

From August 3, 2023, and August 9, 2023, the Petitioner was seen at Concentra Medical Center for physical therapy appointments. During the August 9, appointment x-rays of the right shoulder and was viewed by Dr. Maria Vlahos. Vlahos diagnosed Petitioner with a right shoulder strain and continued his light duty restrictions. (PX 1 at 126- 132).

Additional physical therapy appointments were attended by the Petitioner on August 10, 2023, August 14, 2023, and August 16, 2023, before following up with Dr. Vlahos on August 16, 2023. Dr. Vlahos again diagnosed the Petitioner with a right shoulder strain, recommended additional physical therapy, and continued Mr. Calderon's light duty restrictions. (PX1 at 99).

On August 22, 2023, Petitioner was prescribed cyclobenzaprine, advised to continue with physical therapy, and recommended light duty restrictions. (PX1 at 80). According to Dr. Vlahos report, the Petitioner's restrictions consisted of occasional lifting of no more than 20lbs., occasional pushing or pulling of no more than 20lbs., and to refrain from any reaching above the head with the right arm. PX1 at 81. In addition, Dr. Vlahos recommended the Petitioner avoid working with any power, impact or vibratory tools. (PX1 at 81).

Petitioner continued with his physical therapy as prescribed by Dr. Vlahos. Petitioner attended physical therapy appointments August 22, 2023, August 24, 2023, and again on August 29, 2023. therapy (PX1 at 51-89).

During the August 29, 2023, appointment Dr. Vlahos recommended the Petitioner undergo an MRI of the right shoulder and was advised to continue with physical therapy as well as light duty work restrictions. (PX1at 60.)

Petitioner continued with physical therapy until September 7, 2023. Where the records indicate Dr. Vlahos was waiting for authorization for Petitioner's right shoulder MRI. (PX1 at 31). Records indicate Petitioner's right shoulder symptoms are not improving as expected and he is having difficulty with sleeping. Petitioner reports continued pain with popping sensation along with limited motion with the right shoulder. Dr. Vlahos diagnosed Petitioner with a right shoulder strain and advised him to continue with physical therapy, light duty restrictions, and medications, while awaiting authorization for a right shoulder MRI. (PX1 at 35, 36).

On September 27, 2023, a MRI for Petitioner's right shoulder was performed at Chicago Northside MRI & Imaging (PX1 at 9-10). The report was remarkable for the following impressions:

1. Significant AC joint edema. Correlate for overuse injury.
2. Rotator cuff tendinosis without a define tear.
3. Superior labral degeneration. Biceps tendinosis.
4. 1.4cm. humeral head lesion, probable enchondroma.

After an appointment on October 3, 2023, Dr. Vlahos referred petitioner to an orthopedic specialist for additional evaluation and treatment concerning Petitioner's right shoulder symptoms. Petitioner was provided with light duty work restrictions consisting of no lifting greater than 5lbs., no reaching above shoulders, no use of power, impact or vibratory tools and avoid repetitive work or using the shoulder with force. (PX1 at 8).

The initial orthopedic consultation occurred on October 26, 2023, with Dr. Kevin Tu of Concentra Medical Center. The history taken at the time indicates Petitioner was seen at the request of Dr. Vlahos for consultation for right shoulder pain. Dr. Tu reviewed the results of the right shoulder MRI and confirmed the results were remarkable for right shoulder AC joint edema with rotator cuff tendinosis and enchondroma in the humeral head. (PX1 at 2,3) Dr. Tu diagnosed the Petitioner with right shoulder AC joint arthropathy and secondary shoulder impingement. Further, Dr. Tu indicated that Petitioner's condition of ill-being was caused by his industrial exposure. Based on his clinical findings, Dr. Tu recommended and administered a cortisone injection to Petitioner's right shoulder. In addition, Dr. Tu recommended the Petitioner continue with physical therapy and light duty restrictions of no lifting greater than 10lbs. and no overhead activity with the right arm. (PX1 at 2, 3)

On November 30, 2023, the Petitioner returned to Dr. Tu for an orthopedic follow-up appointment. (PX1 at 225-233). Despite the previous right shoulder injection, the Petitioner's symptoms continued to worsen. Upon performing a physical examination Dr. Tu documented a positive O'Brien test as well as positive Neers and Hawkins exams. The petitioner was diagnosed with right shoulder joint arthropathy and impingement. It was concluded that Petitioner had failed conservative care consisting of physical therapy, medications, and work modifications, therefore Dr. Tu recommended Petitioner proceed to surgery. Specifically, Dr. Tu recommended a right shoulder arthroscopic subacromial decompression and distal clavicle excision. PX1 at 232. In the meantime, the Petitioner was to remain working with restrictions of no lifting greater than 10lbs. and no overhead activity with the right arm. (PX1 at 232).

Petitioner presented with Dr. Tu occurred on December 7, 2023. (PX1 at 216-224). the Petitioner was being treated for right shoulder AC joint arthropathy and secondary impingement. (PX1 at 223). Mr. Calderon was diagnosed with right shoulder impingement and right shoulder acromioclavicular joint arthropathy and again recommended surgery. (PX1 at 223). Dr. Tu advised Petitioner should refrain from use of the right arm while at work. (PX1 at 232).

On January 11, 2024, the Petitioner returned to Dr. Tu for a follow-up appointment. Petitioner indicated that despite providing restrictions of no use of the right arm during his last evaluation, the Petitioner was still required to use heavy air guns while at work. (PX1 at 212). Dr. Tu diagnosed Petitioner with right shoulder acromioclavicular joint arthropathy and secondary impingement and recommended surgical intervention. Advised Petitioner to continue light duty restrictions of no use of the right arm. (PX1 at 212-215).

DR. Grant Garrigues

Dr. Grant E. Garrigues of Midwest Orthopaedics at Rush was hired by the Respondent to perform a records review. The report from Dr. Garrigues is dated February 12, 2024. (RX1.) Dr Garrigues concluded that the Petitioner suffered from right shoulder acromioclavicular joint osteoarthritis that was not work related. Dr. Garrigues opined that Petitioner's degenerative condition although symptomatic while at work was not worsening or exacerbating the underlying pathology. (RX1 at 7). Instead, the examiner stated that while Petitioner feels pain at work in the right shoulder, it is merely irritating a chronic issue in the shoulder. to DR. Garrigues indicated the Petitioner would benefit from additional therapy, anti-inflammatory, as well

as an injection to the shoulder. However, the treatment would not be for a work-related injury. work Dr. Garrigues stated the Petitioner could return to full duty work. (RX1 at 7).

The Petitioner returned to Dr. Tu on February 15, 2024. (PX1 at 188-203). Dr. Tu continued his recommendation for surgery and continued the Petitioner's light duty restrictions. (PX1 at 202).

On April 4, 2024, the Petitioner returned to see Dr. Tu for an orthopedic consultation. (PX1 at 179-187). On physical examination, Dr. Tu reported positive Neer and Hawkins signs and diagnosed the Petitioner with right shoulder acromioclavicular joint arthropathy and secondary impingement. (PX1 at 186). Dr. Tu recommended Petitioner undergo surgical intervention and to continue to work with restrictions until surgery could be authorized. (PX1 at 186).

IME

On April 9, 2024, an IME was conducted Dr. Garrigues of Midwest Orthopaedics at Rush. (RX1). Dr. Garrigues concluded that Petitioner would benefit from continued home exercises and an additional ultrasound guided injection to the right shoulder. Should conservative care fail, Dr. Garrigues advised surgery would be an appropriate next step. (RX1 at 16). Dr. Garrigues did not causally relate Petitioner's condition to the reported accident on July 28, 2023. Dr. Garrigues believed Petitioner's condition is not work related because of a lack of evidence showing Petitioner's condition was exacerbated, accelerated or otherwise changed by the natural history of his work exposure. (RX1 at 16). The examiner goes on to say that Petitioner may have noticed pain while doing his work activities, but that this was not because of his work activity, but rather part of the natural progression of his condition. (RX1 at 16).

On May 6, 2024, the Petitioner obtained a second orthopedic opinion from Dr. Ankur Chhadia of Suburban Orthopaedic. (PX2 at 40-43). According to Dr. Chhadia's report the Petitioner was complaining of ongoing right shoulder pain resulting from a work injury. Petitioner described an overuse accident after four days of heavy work while consistently lifting boxes that weighed approximately 70lbs. (PX2 at 40). The Petitioner denied having had any prior injuries or problems with the right shoulder and indicated his pain was a 7 out of a possible 10. Based on his findings, Dr. Chhadia diagnosed Petitioner with right shoulder osteoarthritis, superior glenoid lesion, impingement syndrome and recommended light duty work Dr. Chhadia performed a steroid intra articular injection in the right shoulder. (PX2 at 41).

Dr. Chhadia further advised that he disagreed with the IME examiner's causal opinion. Dr. Chhadia argues that Petitioner was working in a heavy capacity performing repetitive reaching and lifting of moderate demands loads. (PX2 at 42). Dr. Chhadia states that these demand loads placed stress upon the Petitioner's shoulder and acromioclavicular joint resulting in pain dysfunction, impairment and disability. Id. at 42. Dr. Chhadia further states that Petitioner may have had some level of arthritis in the acromioclavicular joint, but it was not symptomatic prior to the occupational episode. Ultimately, the occupational functions of Petitioner's work resulted in making his condition symptomatic and aggravated, thus requiring treatment. As a result, Dr. Chhadia concluded Petitioner's current condition of ill-being and need for additional care was related to his accident on July 28, 2023, (PX2 at 42)

After beginning his care with Dr. Chhadia Petitioner was referred to start physical therapy with La Clinica. Which started on May 8, 2024. (PX3 at 11-130).

Records indicate the Petitioner treated with La Clinica for physical therapy from May 8, 2024 until being discharged on November 11, 2024. (PX3).

The Petitioner returned to Dr. Tu on May 16, 2024. (PX1 at 247-249). Dr. Tu reviewed the results of Respondent's independent medical exam authored by Dr. Garrigues and disagreed with his position on causation. Dr. Tu argued that Mr. Calderon did not have any symptoms prior to his described work accident. Dr. Tu notes that the mechanism of injury certainly could have caused his impingement and resulted in aggravation of his pre-existing non-symptomatic AC joint arthropathy. Dr. Tu continued his recommendation for surgery on the right shoulder and prescribed ongoing work restrictions of no use of the right arm. (PX1 at 248).

On June 3, 2024, the Petitioner returned to Dr. Chhadia for a follow up appointment. (PX2 at 48-52). At the time of the evaluation the Petitioner had complaints of right shoulder pain of 7 out of a possible 10, despite experiencing limited relief from the previous injection. PX2 at 48. The petitioner was advised to continue with physical therapy and was provided with ongoing work restrictions of no lifting more than 10lbs. and no overhead lifting. (PX2 at 49, 51).

Petitioner was seen for a right shoulder MR Arthrogram occurring on June 3, 2024. (PX2 at 44-47). According to the radiologist the exam was remarkable for the following impressions:

1. Right supraspinatus tendinosis, interstitial tear and intermediate grade articular surface tear.
2. Right subscapularis tendinosis and interstitial tear.
3. Altered signals of the intra-articular segment of the long head of the right biceps brachii tendon extending to the bicipital anchor and superior glenoid labrum consistent with partial tear with tears at the anterior and posterior glenoid labrum.
4. A transchondral synovial intrusion cyst is seen at the right humeral head.
5. Arthropathic right acromioclavicular joint.

At a follow up appointment with Dr. Chhadia on July 1, 2024. Petitioner reported decreased pain since last appointment and rated his current pain complaints to be 5 out of a possible 10. Petitioner was diagnosed with sustaining an acromioclavicular joint stress injury and aggravation of arthritis from occupational overload. (PX2 at 53-57). Petitioner was allowed to return to work with restrictions of no lifting more than 10lbs. with the right arm and no overhead lifting. (PX2 at 54). Dr. Chhadia reiterated that the occupational functions described by the Petitioner did result in making his once asymptomatic condition symptomatic and necessitating treatment. (PX2 at 54). In addition to Providing work restrictions, Dr. Chhadia further recommended the Petitioner continue with physical therapy. (PX2 at 54, 57).

The Petitioner returned to Dr. Tu on July 18, 2024, for a follow-up appointment. Per Dr. Tu, Petitioner continued to exhibit difficulty with overhead and reaching activities with his right arm. Dr. Tu provided a diagnosis consisting of right shoulder acromioclavicular joint arthropathy with secondary impingement and once again recommended surgery. With respect to work capacity, Dr. Tu advised that Petitioner should refrain from any work with the use of the right arm. (PX1 at 250-251).

Petitioner was again seen at Suburban Orthopaedics on July 29, 2024, for further evaluation and care. Dr. Chhadia concluded that Petitioner suffered from a right acromioclavicular joint stress injury and aggravation of arthritis from occupational overload. The Petitioner was prescribed work restrictions consisting of no lifting more than 30lbs. and again advised to continue with physical therapy. (PX2 at 58-62).

Petitioner saw Dr. Chhadia on August 26, 2024. (PX2 at 64-67). At the evaluation the Petitioner complained of ongoing pain and popping in his right shoulder. Petitioner indicated his right shoulder pain remained a 5 out of a possible 10. Dr. Chhadia diagnosed the Petitioner with an acromioclavicular stress injury and aggravation of arthritis from occupational overload and again prescribed Petitioner restrictions for work as well as physical therapy. (PX2 at 63-64).

Petitioner saw Dr. Tu on September 19, 2024. Dr. Tu continued to try to obtain authorization for Petitioner's surgical intervention. Dr. Tu indicated that Petitioner still had pain to the superior aspect of the shoulder at the AC joint and at the anterolateral aspect of the acromion. Based on his findings, Dr. Tu recommended surgery and advised the Petitioner to refrain from working with the use of the right arm. (PX1 at 253).

On October 9, 2024, the Petitioner returned to Dr. Chhadia for an additional evaluation of the right shoulder. (PX2 at 71-76). Dr. Chhadia again diagnosed Petitioner with right shoulder pathology and restrictions of no lifting greater than 30lbs. and no overhead lifting. However, after conducting a physical examination and reviewing Petitioner's diagnostic imaging, along with job video provided by Petitioner, Dr. Chhadia recommended surgical intervention. In addition, Dr. Chhadia once again reaffirmed his opinion that Petitioner's condition of ill-being was causally connected to his occupational injury. Dr. Chhadia recommended a right shoulder arthroscopic subacromial decompression with debridement, biceps tenodesis, and distal clavicle excision. Dr. Chhadia further recommended the use of two DME devices for post-surgery needs consisting of an abduction sling with pillow and an ice machine. PX2 at 71- 73).

Petitioner returned to Illinois Orthopedic Network on November 7, 2024, for an appointment with Dr. Chhadia and his assistant, Alissa Kremer, PA. (PX2 at 77-79). Per the treatment notes, the Petitioner continued to wait for authorization for Dr. Chhadia's recommended surgery. (PX2 at 77). Petitioner was provided with work restrictions consisting of no carrying or lifting more than 30lbs. and no lifting above shoulder level with the injured right arm. With respect to further physical therapy, Petitioner was advised to finish his remaining sessions before transitioning to a home exercise program. (RX2 at 77,79.)

Petitioner returned to see Dr. Tu on December 19, 2024. with cross-body adduction. At the conclusion of Petitioner's appointment, Dr. Tu again recommended arthroscopic right shoulder repair with distal clavicle excision along with restrictions of no use of the right arm. (PX1 at 255).

Petitioner returned to Dr. Chhadia on December 23, 2024 and on February 3, 2025. Dr. Chhadia continued Petitioner's restrictions and again recommended surgery for Petitioner's right shoulder. (PX2 80-86).

Petitioner testified he would like to proceed with the surgeries proposed by Dr. Tu and by Dr. Chhadia, (TR. at 32).

Testimony of John Carey:

John Carey, Vice President of AAMRO Corporation, testified his job duties as Vice President for the respondent consist of overseeing production, financial responsibilities, and equipment maintenance. (Tr. 49). Mr. Carey described AAMRO Corporation as a metal finishing company with three divisions comprising of a deburring, polishing and blasting department. (Tr. at 50).

Mr. Carey testified that Petitioner had worked for Respondent for about ten years and worked primarily in the polishing and cleaning departments. Mr. Carey testified that Petitioner was working for Respondent on July 28, 2023, in the blasting department. (Tr. at 52).

Mr. Carey testified the job of sandblasting required a worker to load a wheelbarrow machine with metal parts and after a 15-minute cycle was completed, the worker would unload the parts by hand. Mr. Carey further illustrated that the parts that would be loaded into the machine were in a large bin that were brought in with a forklift. (Tr. at 53-54).

Mr. Carey testified that he was unable to remember the events of from July 24, 2023, through July 28, 2023. (Tr. at 61). Mr. Carey testified that he performed this work duties from his office but did move around the work floor on occasion. and did not have direct line of site to Mr. Calderon. (Tr. 62-66). Mr. Carey went on to state that he did not have firsthand knowledge of the events of July 28, 2023, (Tr. 64).

Mr. Carey recorded a video of an employee doing similar job activities that the Petitioner would have been performing on performing on July 28th 2023, . which was admitted into evidence as (RX 4).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). 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. 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). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator Petitioner's testimony consistent with the totality of the evidence submitted.

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that he suffered an injury that arose out of and in the course of his employment. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). A compensable injury occurs "in the course of" employment when it is sustained

while performing reasonable activities in conjunction with claimant's employment. *Id.* The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶36. An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id.* at citing *Sisbro*, 207 Ill. 2d at 203. 23IWCC0186 21 WC 006837 21

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he did sustain an accident that arose out of and in the course of Petitioner's employment by Respondent on July 28, 2023. In support of his findings, the Arbitrator relies on Petitioner's credible testimony that his duties consisted of working for Respondent in one of their three departments, deburring, polishing, and blasting. The testimony was that on July 28, 2023, while working in the blasting department, Petitioner began to experience right shoulder pain, which he timely reported to his supervisor Jaime Carmona, and was unable to finish his regular work shift. In reaching his conclusion Arbitrator also considered that Petitioner he had not experienced any right shoulder discomfort prior to July 28, 2023. Arbitrator further considered the various medical providers that connected Petitioner's injury to his job duties and the Petitioner's description of how he was performing said duties.

(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. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). 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. *Id.* 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. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

Having considered all of the evidence available, the Arbitrator finds that Petitioner's current condition of ill-being, as it relates to his right shoulder, is causally related to the July 28, 2023, accident. In so finding, the Arbitrator relies on Petitioner's credible testimony and the treatment records and opinions of Respondent's own preferred occupational health provider, orthopedic surgeon Dr. Kevin Tu of Concentra Medical Center and those of orthopedic surgeon Dr. Ankur Chhadia of Suburban Orthopaedics.

Arbitrator finds that the petitioner was credible in his testimony that he did not feel any symptoms in his right shoulder prior to commencing work on July 24, 2023 and did not have any significant treatment for his right shoulder prior to n July 28, 2023. work injury. (Tr 33).

Petitioner testified that his treatment for his right shoulder began after the work injury and after being referred to Concentra Medical Center by respondent. Petitioner was seen by Dr. Maria Vlahos who confirmed the Petitioner reported shoulder pain at his initial appointment as a result of lifting heavy boxes at work on July 28, 2023. (PX1 at 1320. Dr. Vlahos diagnosed Petitioner with a right shoulder strain and continued his light duty restrictions and eventually referred Petitioner for an orthopedic consultation with Dr. Tu. (PX1 at 8).

Dr. Kevin Tu, in finding causation concluded that Petitioner suffers from right shoulder acromioclavicular joint arthropathy with secondary impingement as a result of his occupational injury while working for Respondent on July 28, 2023. Dr. Tu indicated Petitioner did not have any symptoms prior to his work injury and only after lifting a heavy bin weighing approximately 80lbs. According to Dr. Tu the described work activities would have caused Petitioner's impingement and resulted in aggravation of pre-existing non-symptomatic AC joint arthropathy. (Tr. 247,248).

Dr. Tu's causal opinion is also supported by Petitioner's second orthopedic opinion provided by Dr. Ankur Chhadia of Suburban Orthopaedics. Dr. Chhadia noted the Petitioner was working in a heavy demand level performing repetitive reaching and lifting of moderate to heavy demand loads when he reported his injury. Chhadia indicated these demand loads placed stress upon the shoulder and acromioclavicular joint resulting in pain dysfunction, impairment and disability. (PX2 at 81).

In reaching his conclusion the Arbitrator considered the opinions of Section 12 Examiner Dr. Grant E. Garrigues and finds that the opinions of Dr. Garrigues do not outweigh the opinions of Dr. Vlahos, Dr. Tu or those of Dr. Chhadia. Arbitrator is not convinced by Dr. Garrigues opinion that even though Petitioner's condition was aggravated by his work with Respondent, it was not to the extent that it would cause long-term aggravation, exacerbation or acceleration of the underlying condition. (RX1 at 17). Prior to July 28, 2023, the Petitioner testified to working in a full duty capacity for the past 10 years without issue to the right shoulder. Dr. Garrigues fails to address that the Petitioner's condition was asymptomatic prior to the accident and has not been unable to return to work or has his condition stabilized.

Arbitrator gives greater weight to Petitioner's treating providers' conclusions and recommendations for surgery, which are consistent with the medical records, medical history and the credibility testimony of the Petitioner and finds that the Petitioner's condition of ill-being is related to the July 28, 2023, work accident.

(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:

Having found accident and causal connection Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges.

At arbitration, the Petitioner presented the following unpaid medical bills:

Illinois Orthopedic Network:	\$137.46
MedLegal Associates:	\$4,750.00
Suburban Orthopaedics:	\$5,586.00
Midwest Specialty Pharmacy:	\$7,797.82
La Clinica:	\$26,779.40
Concentra Medical Center:	\$350.26

Arbitrator has found that Petitioner's treatment has been reasonable and necessary, Orthopaedics, the Arbitrator further finds that all bills, as provided by Petitioner, are awarded and that Respondent is liable for payment of bills related to reasonable and necessary care, pursuant to the medical fee schedule and

sections 8(a) and 8.2 of the Act. In addition, the Arbitrator notes that the Respondent failed to provide any evidence by way of a utilization review.

(K) Is Petitioner entitled to any prospective medical care, and the Arbitrator finds as follows:

Having found in favor of the respondent on the above mentioned issues, the Arbitrator finds Petitioner is entitled prospective medical consisting of surgery as recommended by Dr. Ankur Chhadia of Suburban Orthopaedics and Dr. Kevin Tu of Concentra Medical Center. Specifically, the Arbitrator awards Petitioner the recommended right shoulder arthroscopic subacromial decompression with debridement, biceps tenodesis, and distal clavicle excision surgery.

(L) Is Petitioner entitled to temporary benefits of TTD, and the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds Petitioner is entitled to total temporary disability (TTD) benefits from January 18, 2024, through February 11, 2025, representing 57 2/7 weeks of disability.

In Illinois when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized or in other words, whether the claimant has reached maximum medical improvement. With regards to this issue, section 8(b) of the Worker's Compensation Act states that weekly compensation shall be paid as long as the total temporary incapacity lasts. The Illinois Appellate court has interpreted this to mean that an employee is temporary totally incapacitated from the time of a workplace injury incapacitates the Petitioner from work until such a time as the Petitioner has reached maximum recovery, as the nature of the injury will permit.

The petitioner credibility testified without evidence to the contrary, that since January 11, 2024, because the Respondent has been unable to accommodate his work restrictions, he has not been able to return to work. (Tr 26). On January 11, 2024, Petitioner was evaluated by Dr. Kevin Tu for a routine orthopedic follow up. (PX1 at 212-213). The Petitioner was provided with restrictions consisting of no use of the injured right arm. (PX1 at 204). There was no evidence to the contrary.

The Petitioner was provided with restrictions from Dr. Ankur Chhadia beginning on May 6, 2024. that remain in place as of the date of last service on February 3, 2025. Dr. Chhadia's noted on February 3,

2025, that the Petitioner may return to work so long as the following functional limitations are adhered to: no lifting more than 30lbs. with the right arm and no overhead lifting. (PX2 at 84).

The Arbitrator finds the treating medical providers' work status recommendations to be reasonable for the type of injuries sustained and given the totality of all the evidence, finds the Petitioner has proved by a preponderance of the evidence that he is entitled to TTD, as provided for in the Act.

As a result, the Petitioner is owed TTD from January 18, 2024, through February 11, 2025, or 57 2/7 weeks totaling \$23,138.29.

(N) is Respondent due any Credits, and the Arbitrator finds as follows:

Per Respondent's Exhibit 2, they have paid a total of \$2,215.05 in TTD benefits. Respondent issued benefits to Petitioner on four separate occasions:

- September 27, 2023, to September 29, 2023:	\$195.44
- September 30, 2023, to October 8, 2023:	\$586.34
- October 30, 2023, to November 4, 2023:	\$390.89
- January 12, 2024, to January 27, 2024:	\$1,042.38

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC039041
Case Name	Wandzella King v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0015
Number of Pages of Decision	33
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Seymour
Respondent Attorney	Elizabeth Meyer

DATE FILED: 1/26/2026

/s/Kathryn Doerries, Commissioner

Signature

16 WC 039041

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

WANDZELLA KING,

Petitioner,

vs.

NO: 16 WC 039041

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON CIRCUIT COURT REMAND

This cause comes before the Commission on remand from the Circuit Court of Cook County, Illinois, County Department, Law Division, which set aside the Commission's Decision and Opinion on Review and remanded the case for a new hearing *de novo*, to include oral argument upon the request of either party. In its Order entered February 28, 2025, the Court determined the Commission violated Petitioner's due process rights by scheduling Respondent's petition for review for discussion only without oral argument, and directed the Commission to schedule the case for oral argument upon request of either party. The Court further authorized the Commission to require further pleadings or briefing, conduct further hearings, or employ whatever methods it deems necessary to comply with the Court's order. The case was heard for oral argument on November 25, 2025. The Commission, after considering the issues of causal connection, temporary total disability, medical expenses and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Background

Petitioner filed her Application for Adjustment of Claim on or about December 27, 2016, alleging she sustained injuries arising out of and in the course of her employment on December 3, 2016. The matter proceeded to an Arbitration hearing before Arbitrator Ana Vasquez on November

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30, 2022. The Arbitrator issued her decision on June 23, 2023. The Arbitrator determined Petitioner was entitled to 171-3/7 weeks of TTD benefits and sustained a 20% loss of use of the person as a whole under §8(d)2 of the Act. The Arbitrator also directed Respondent to pay reasonable and necessary medical services as set forth in PX13, pursuant to §8(a) and §8.2 of the Act. Penalties were requested but denied.

On Monday, July 24, 2023, Respondent timely filed a Petition for Review of the Arbitration Decision before the Commission. In its Petition for Review, Respondent raised causation, medical, TTD, and nature and extent of disability as the issues on which it took exception. The Transcript was filed on August 2, 2023, and the Return Date on Review was set for October 6, 2023. Respondent did not file a Statement of Exceptions or brief in support of its petition. Petitioner did not file a cross review, but timely filed her response brief on November 20, 2023.

The failure of any party to file a Statement of Exceptions and brief, or response brief, is governed by section 9040.70(d) of the Commission's Rules Governing Practice before the Illinois Workers' Compensation Commission. 50 Ill. Adm. Code §9040.70(d). This rule states, in pertinent part:

Failure of any party to timely file any Statement of Exceptions and Supporting Brief or Response Brief required by this Section, including an abstract when required under subsection (f), *shall constitute a forfeiture of the right to oral argument by that party*. When a party has timely filed, that party may petition the Commission to present oral arguments in support of its Statement of Exceptions and Supporting Brief and/or Response Brief. Within 15 days after the date the last filing was due, a party that has timely filed may petition the Commission for oral argument. The assigned Commissioner may order oral argument at his or her discretion, notwithstanding anything to the contrary in this Part. (Emphasis added.) 50 Ill. Adm. Code 9040.70.

The provision providing for the forfeiture of the right to oral argument was found valid by the Appellate Court in *Klein Construction/Illinois Insurance Guaranty Fund vs. Illinois Workers' Compensation Comm'n*, 384 Ill. App. 3d 233, 892 N.E.2d 112 (2008) where the Appellate Court considered the predecessor to this rule, section 7040.70(d). In *Klein*, the claimant timely filed a petition for review but failed to file a Statement of Exceptions and brief. Based on the forfeiture provision in the rule, the Commission denied oral argument on the claimant's petition for review. The Commission nevertheless proceeded to consider the issues raised in the petition for review and entered a decision modifying the arbitrator's decision with findings favorable to the claimant. At that time, section 7040.70(d) of the rules provided that the Commission would "only consider, and oral arguments will be limited to," issues *raised in both* the petition for review and the Statement of Exceptions. *Klein Construction*, 384 Ill. App. 3d at 236. Section 7040.70(d) also included forfeiture language waiving oral argument when a party failed to file a Statement of Exceptions and brief. *Id.* The employer and the Guaranty Fund argued on appeal that the failure to file a Statement of Exceptions and brief constituted a waiver of all issues and therefore the

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Commission's modification of the arbitration decision was contrary to the law. The Appellate Court rejected the argument and pointed out that the rule as it existed at that time conflicted with §19(e) of the Act, which required the Commission to address all questions of law or fact which appear from the transcript of the evidence when reviewing an arbitration decision. The Court noted that administrative agency rules which are in conflict with the statute are invalid. The Court also clarified its prior holding in *Jetson Midwest Maintenance vs. Industrial Comm'n*, 296 Ill. App. 3d 314, 694 N.E.2d 1037 (1998), explaining that a reviewing party may properly preserve an issue for review by raising the issue in either its petition for review or in its Statement of Exceptions and brief. The Court went on to find the forfeiture language taking away the right to oral argument was valid, provided the Commission complied with §19(e) of the Act:

Although the claimant's failure to file a Statement of Exceptions *acted as a waiver of his right to an oral argument* and an election not to advise the Commission of any reason to change the arbitrator's decision or to grant his petition, *the Commission was nevertheless required by statute to review all questions of law or fact which appeared from the transcript of evidence*. It appears that the Commission discharged its statutory duty in this regard and, as a consequence, modified the arbitrator's decision. We find no error of law in the procedure employed by the Commission, Rule 7040.70(d) notwithstanding. (Emphasis added.) *Klein Construction*, 384 Ill. App. 3d at 238.

The rule in its current form, now codified as section 9040.70(d), no longer limits the scope of the Commission's review to only those issues raised in *both* the petition for review and Statement of Exceptions; however, the current rule provides that "oral arguments" shall be limited to those issues raised in both the petition for review and the Statement of Exceptions and brief, as well as those issues raised in the response brief. 50 Ill. Adm. Code 9040.70(d). The rule continues to provide that the failure to file a statement of exceptions and brief, or response brief "*shall constitute a forfeiture of the right to oral argument by that party*." (Emphasis added.) *Id.*

In the case at bar, the Return Date on Review was set for October 6, 2023. Accordingly, Respondent's Statement of Exceptions and brief was due on or before November 6, 2023, and Petitioner's response brief was due on or before November 21, 2023. As quoted above, section 9070.40(d) of the Rules provides that, "[w]hen a party has timely filed, *that party may petition* the Commission to present oral arguments in support of its Statement of Exceptions and Supporting Brief and/or Response Brief." (Emphasis added.) 50 Ill. Adm. Code 9040.70(d). The rule also provides, "[w]ithin 15 days after the date the last filing was due, a party that has timely filed may petition the Commission for oral argument." *Id.* As such, Petitioner had 15 days from the date the last filing was due, on or before December 6, 2023, within which to petition the Commission for oral argument. In the instant case, however, Petitioner did not petition the Commission to present oral argument after Respondent failed to file its Statement of Exceptions and brief. On March 1, 2024, the Commission sent notice to the parties advising oral argument was denied because Respondent failed to file its Statement of Exceptions and brief, and further advising the parties that the matter would be heard for "discussion only" on April 16, 2024. Attached to the email was a

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“Notice of Discussion” containing the same information. During the period of March 1, 2024 through April 16, 2024, Petitioner made no attempt to petition for oral argument.

In compliance with §19(e) of the Act, and consistent with the Appellate Court’s holdings in *Jetson Midwest* and *Klein Construction*, supra, the Commission considered the issues raised in Respondent’s petition for review. The Commission also considered Petitioner’s response brief. On June 17, 2024, the Commission entered its Decision and Opinion on Review, case number 24 IWCC 0292, affirming and adopting the Arbitrator’s Statement of Facts, but modifying the Arbitrator’s Conclusions of Law and the award regarding issues F, J, K, and L.

The Petitioner sought judicial review before the Circuit Court of Cook County. On February 28, 2025, Judge Daniel Duffy entered an Order setting aside the Commission’s Decision and Opinion on Review and remanding the case to the Commission “for a hearing de novo, to include oral argument upon the request of either party.” *King vs. Chicago Transit Authority, et.al.*, No. 2024L050388 (Cir. Ct. Cook County, Feb. 28, 2025)

The Commission notes that the Circuit Court’s Order emphasized the parties’ right to due process but made no mention of the Commission’s discretion regarding oral argument as set forth in section 9040.70(d) of the Commission’s Rules. The Circuit Court’s Order also made no mention of the fact that Petitioner did not file a cross-petition for review or that Petitioner failed to request an oral argument before the Commission’s discussion of the review on April 16, 2024. The Supreme Court has held that when a cause is remanded, the Commission has jurisdiction of the cause to the same extent as before; however, the Commission is bound by the rules of law announced and the directions given by the judgment of the circuit court. *Riley vs. Industrial Comm’n.*, 95 Ill. 2d 315, 321, 447 N.E.2d 799 (1983), *Stockton vs. Industrial Comm’n.*, 69 Ill. 2d 120, 125, 370 N.E.2d 548 (1977), citing *Raffaello vs. Industrial Comm’n.*, 326 Ill. 166, 171, 157 N.E.w2d 206 (1927).

Decision and Opinion on Remand

Following the entry of the Circuit Court’s order, Petitioner filed a motion on April 23, 2025, requesting a hearing as well as reinstatement of the Arbitrator’s original decision. The Commission entered an Order on May 5, 2025, granting in part and denying in part Petitioner’s motion. The Commission granted Petitioner’s request for oral argument but denied Petitioner’s request to reinstate the Arbitrator’s original decision.

On June 1, 2025, Petitioner filed a second motion with a request to supplement the record with additional exhibits. The motion was heard before Commissioner Kathryn Doerries on June 26, 2025. The Commission then entered an Order on August 18, 2025, denying Petitioner’s motion to supplement the record, citing §19(e) of the Act and §9040.40(a) of the Commission’s Rules. Section 19(e) of the Act provides that, “[i]n all cases in which the hearing before the arbitrator is held after the effective date of this amendatory Act of 1989, no additional evidence shall be introduced by the parties before the Commission on review of the decision of the Arbitrator.” 820

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ILCS 310/19. Section 9040.40(a) of the rules provides that, “In all cases on Review, no additional evidence shall be introduced by the parties before the Commission unless relating to procedural issues relevant to the Review process. 50 Ill. Adm. Code 9040.40. As the Commission is bound by the Act and the Rules Governing Practice Before the Illinois Workers’ Compensation Commission, we denied Petitioner’s motion.

This matter was subsequently scheduled and heard for oral argument on November 25, 2025. The Commission allowed both parties to present oral argument. Petitioner objected to Respondent being permitted to present oral argument, which the Commission denied. The Commission did, however, grant Petitioner’s request for additional rebuttal argument after Respondent’s rebuttal argument.

The Commission, after considering the issues of causal connection, temporary total disability, medical expenses and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms and adopts the Arbitrator’s Statement of Facts, however, the Commission views the evidence differently than the Arbitrator. Thus, the Commission modifies the Arbitrator’s Conclusions of Law as specified below.

Issue F, whether Petitioner’s current condition of ill-being is causally related to the injury.

The Commission strikes paragraphs two, three and four under Issue F, and substitutes the following paragraphs:

The Commission notes Petitioner’s medical histories contain various inconsistencies relative to the subject December 3, 2016, accident description and sequela. The initial histories confirm the bus was moving slowly (5 miles per hour per 12/5/16 Concentra record (PX3); Petitioner testified “not even 20 miles an hour.” (T. 56)) and there was no crash, collision or trauma. The Respondent’s Incident Detail Report notes that Petitioner complained of back, right and left shoulder pains. (PX1, T. 97) According to the Incident Detail Report, a Chicago Fire Department ambulance arrived on scene and transported Petitioner to Community First Medical Center. *Id.* The Chicago Fire Department Incident Report History states her complaint was shoulder pain. (PX2, T. 135) The “In summary” portion is not fully legible but, in part, states that she was driving her bus when something happened with the engine and she had to strong hold onto the steering wheel to control the bus. (PX2, T. 135) The Community First Medical Center History of Present Illness documents “stated reason for visit: pt brought by cfd per w/c. pt states while turning steering wheel of bus today, because of steering mechanics, she developed pain in neck, shoulder, back and legs.” (PX2, T. 130) Nurse Ted May ED notes document, “Pt admitted to er with c/o pain to upper shoulder, right leg and general pain from steering power. [P]t had to turn wheel with exertion (sic) no collision no trauma to pt or bus a/ox3 ambulates with steady gait noted limb to right leg (sic) no loc no other distress noted.” (PX2, T. 123) The PA-C, Bernadette

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Miszczynyn documented the Diagnosis: 1) Muscle strain; 2) Acute bilateral low back pain without sciatica; 3) Cervical strain, initial encounter. The ED attending attestation Note, signed by Jared Marcucci MD states, “[p]atient interviewed and examined by me. My initial evaluation concurs with the APN’s evaluation. “ (PX2, T. 118)

Medical Decision Making and ED course states, “58 y.o. female here with muscular aches to bilateral neck and bilateral low back after power steering gave out CTA bus. [N]o neuro deficits on exam.” X-rays C-spine negative; X-ray lumbar spine negative; Pain meds and muscle relaxers; Follow-up with occupational therapy. (PX2, T. 120) The History and Physical states, “[p]atient is 58 y.o. female h/o MRSA who presents with body aches. Pt states she works at (sic) CTA driver, states PTA the power steering gave out on the bus while she was driving. Patient states she had 2 (sic) use all of her strength to steer the bus axis of (sic) the road where she stopped. She complained of bilateral upper neck and shoulder pain and bilateral low back pain but denied weakness of any of her extremities, numbness or tingling to her extremities, head neck or back injury, LOC, nausea, vomiting, chest pain, shortness of breath, abdominal pain.” (PX2, T. 118)

Two days later on December 5, 2016, Petitioner reported to Concentra that she was driving a bus for Respondent at about 5 mph, as she was stopping, the hydraulic system failed, and that she had to exert great force to keep the bus steady, and it finally stopped. Later she noted the onset of moderate pain in multiple areas including the wrists, hands, elbows, shoulders, neck, upper and lower back and the knees. (PX3) The Commission finds that Petitioner’s inclusion of wrists, hands, elbows and knees is vastly different than Petitioner’s initial complaints.

Approximately one month after Petitioner was discharged from physical therapy on February 21, 2017, Petitioner presented to the Emergency Department at Northwestern Lake Forest Hospital on March 24, 2017, complaining of chronic body spasms since a MVC in December. “Pt was a restrained city bus driver who hit a pothole and has been having spasm since.” (PX5, 13, T. 395) She reported having had a CT and MRI at Vista already. *Id.* The ED notes confirm “Musculoskeletal symptoms: Back pain and Muscle pain.” “Neurologic symptoms: Negative except as documented in HPI but no headache, no dizziness, no numbness, no tingling or no weakness.” (PX5, 14, T. 396) Petitioner underwent CT scans of her cervical, thoracic and lumbar spine. (PX5, 16-17, T. 398-399) Petitioner was admitted to the hospital on March 24, 2017, and discharged on March 26, 2017. (PX5, 18, 21, T. 400, 403) The Narrative note stated, “MRI results discussed by Dr. Nagar with pt.” (PX5, 22, T. 404)

The Clinical Notes Results, in the History of Present Illness (HPI) describes: “59yo w/no significant PMHx p/w diffuse body aches s/p MVA 3 mos ago. Pt endorses used to be CTA bus driver, on Dec 3, 2016, her bus wheel malfunctioned causing her to twist her body. Was evaluated at Vista. Per records CT L spine w/out acute findings... Since the accident pt endorses body aches & “muscle spasms” throughout her body “feels like ping-pong bouncing all around from muscle to muscle.” Also endorses generalized HA & blurry vision since then, accompanied by lower neck “tightness.” (PX5, 23, T. 405) The Commission finds this is the first mention of twisting her body in the histories and is inconsistent with the initial histories. Further, these ED notes reflect a MVA

or MVC which connote an impact-type injury, and which should be differentiated for purpose of medical histories.

The OT profile documents, “[p]t demonstrating minimal AROM when asked to perform to assess AROM of shoulder, elbow, wrist and fingers, however spontaneous movement noted when distracted by other tasks. Inconsistent mobility noted in UE AROM.” (PX5, 24, T. 406) Activities of Daily Living notes, “[p]t reporting she was able to eat breakfast this morning with setup provided however when asked to touch her face her mouth she is unable.” *Id.* The Clinical Notes Assessment by the inpatient OT states, “Does not appear to be providing max effort.” (PX5, 26, T. 408) The Clinical Notes Results from the physical therapist’s Assessment notes that, “[p]t displays inconsistent stepping patterns with gait- at times able to advance L LE other times not.” (PX5, 35, T. 417) The Commission finds these inconsistencies documented in the notes undermine the credibility of Petitioner’s testimony regarding her condition of ill-being. As discussed below, Dr. Goldberg noted similar inconsistencies during his section 12 examination on May 8, 2017.

A Consultation Report was authored by Dr. Charulatha Nagar on March 25, 2017, with yet a different accident description. The HPI, documents, “[t]he patient is a 59-year-old CTA bus driver, who was involved in an accident on 12/3/2016 when her bus rail malfunctioned, causing her to twist her body, who was then evaluated at Vista Hospital and had a CT of the spine without any acute findings. Over time she started noticing widespread body pain, has been seeing Dr. Arber, who recommended PT, but currently is admitted because she has widespread body pain and muscle cramps and stiffness. She feels like ping-pong balls bouncing all over, generalized headache and blurry vision, and also felt that during the time of the accident she lost her hearing in the left side and continues to deal with it, and over time has noticeably started using a cane, with a dragging sensation of the left side of the body... In the ER, she underwent CT here, cervical thoracic and lumbar, without acute findings.” (PX5, 37, T. 419) Dr. Nagar’s Impression, in pertinent part, stated that Petitioner was seen by a pain specialist and diagnosed with fibromyalgia. Dr. Nagar recommended “a full workup to include an MRI of the brain, MR of the cervical thoracic and lumbar spine, she has never had before.” (PX5, 28, T. 420) Petitioner was referred for follow up to Dr. Nagar and a rheumatologist, Dr. Jennifer Capezio. (PX5, 45, T. 431)

Dr. Nagar testified on direct examination that she took a history from Petitioner at her first consult on March 25, 2017. (PX7, 13) When Dr. Nagar was asked on direct examination what was the mechanism of injury, she testified, “[t]hat this was related to an accident in the sense she was driving a bus which had some sort of a mechanical failure and she was trying to get the bus to a safer place and had tried to, you know, have the brakes, and resulted in muscle spasm and pain which led her to be taken to the local emergency room.” *Id.*

Petitioner consulted Dr. Walsh on referral from Dr. Nagar for a neurological surgical evaluation on April 14, 2017. (PX5, 154, T. 536) Laura Bailey, APN, CNP, notes in the Chief Complaint section, that Dr. Nagar referred Petitioner to a rheumatologist and therapy at RIC. *Id.* Petitioner told CNP Bailey, “everything hurts.” *Id.* Her past medical history was noted to include migraines, depression, anxiety, and fibromyalgia. *Id.* CNP Bailey noted Petitioner was very

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lethargic on exam but in no acute distress. CNP Bailey further noted that Petitioner did “not fully engage and participate in the exam, making my assessment of her difficult. She demonstrates overall weakness, but it is hard to fully grade her muscle strength given the fact that she does not fully engage in the exam.” (PX5, 156, T. 538) CNP Bailey’s Assessment refers to Dr. Walsh’s Note for his further Neurosurgical evaluation of the patient. *Id.*

Dr. Walsh’s notes indicate that he met with Petitioner in his neurosurgery clinic. (PX5, 157, T. 539) In the history/pertinent exam findings he noted that Petitioner’s chief complaint was, “my whole body hurts.” Dr. Walsh documented that on exam, Petitioner puts forth very poor effort with strength/sensory testing, making assessment very difficult. *Id.* The radiology review section documents Dr. Walsh reviewed the cervical, thoracic and lumbar spine MRIs dated March 24, 2017, and noted diffuse spinal degeneration. Dr. Walsh did not appreciate high grade neural compression or overt instability involving the cervical or thoracic spine, however, he noted some relatively advanced degeneration of the lumbar spine. *Id.* Dr. Walsh advocated for conservative treatment. (PX5, 158, T. 540)

Dr. Edward Goldberg authored an Opinion Report and an Addendum Opinion Report, both dated May 8, 2017. (RX1, RX2) In his first report, in the records review, Dr. Goldberg notes that Dr. Arber questions somatoform disorder. (RX1) Dr. Goldberg also notes that on March 6, 2017, Dr. Craig recommends pain management and considers a rheumatological workup for somatization. *Id.*

After examination of Petitioner and review of records, Dr. Goldberg requested all of the pertinent diagnostics to review. (RX1) Dr. Goldberg authored his addendum report after review of the diagnostics Petitioner underwent on March 24, 2017. According to Dr. Goldberg, the Petitioner’s thoracic spine CAT scan shows no fracture. (RX2) Next, a CT scan of the lumbar spine shows degenerative spondylolisthesis with minimal stenosis. *Id.* A cervical spine MRI shows a small central herniation at C4-5 without any stenosis or herniation and some moderate disc degeneration at C5-C6 and C6-7 with minimal stenosis. *Id.* Dr. Goldberg noted that there is no evidence of any significant nerve compression in any of these studies. *Id.*

Further, when Dr. Goldberg examined Petitioner he found “marked inconsistencies upon examination such as compression of the shoulders, rotation of the trunk, and palpation of the skin over the lumbar spine reproducing her pain. She had 3/5 strength at C5- T1 and L3-S1.” *Id.* Dr. Goldberg could not account for her motor examination based on the diagnostic studies. She also had diminished sensation bilaterally at C5-T1 and L3-S1. Dr. Goldberg opined that this does not correspond with the MRI findings. *Id.*

Based upon the records, Dr. Goldberg opined that Petitioner “likely had an injury to her cervical and lumbar spine.” Based upon the mechanism, Dr. Goldberg felt it was “likely just some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines as well as cervical and lumbar strains. Her examination does not correlate with what is on the MRI.” *Id.* In view of this, Dr. Goldberg found no contraindication from the spine point of view for her

returning to work as a CTA bus driver. *Id.* He noted Petitioner subjectively reported to him that she developed deafness in her left ear and diffuse numbness from the left ear all the way to her left foot after the accident. Dr. Goldberg opined this does not correlate with the MRI findings and “[f]rom the spinal point of view, she is at MMI and can return to work full duty.” *Id.* Dr. Goldberg refrained from commenting on whether there is a psychological component, noting it was beyond his expertise. Dr. Goldberg further deferred to the adjuster as to whether it was necessary to see if there was a psychological component to Petitioner’s subjective complaints. *Id.*

The Commission notes that no psychiatric records are in evidence. The Commission also notes that Ed Steffan’s vocational plan report identifies Petitioner’s treating psychiatrist in the Medical Update portion of his report. According to the report, the psychiatrist is prescribing medication. (PX9DepX2, 5) Petitioner treated with various other doctors at the same time as her treatment with Dr. Nagar, although many of those records are not in evidence, in addition to the missing records from her treating psychiatrist. Whether intentional or inadvertent, the Commission notes Petitioner did not offer these records.

The Commission finds the opinions of Respondent’s Section 12 expert, Dr. Goldberg, an orthopedic surgeon and specialist at Midwest Orthopaedics at RUSH, and well-known to the Commission, to be more reliable regarding a spine injury than those of Dr. Nagar, a neurologist. (PX7, 5) In support of this finding, the Commission cites Dr. Nagar’s curriculum vitae confirming her expertise in treating neuromuscular diseases, with no spinal specialty, surgical or orthopedic experience. (PX7, DepX1) Dr. Nagar’s residency was in neurology and her fellowship was in clinical neuromuscular disease and EMG. *Id.* Dr. Nagar testified that her area of specialization is neuromuscular medicine. (PX7, 6, T. 781) The Commission also notes that Dr. Nagar referred Petitioner to Dr. Walsh, a neurosurgeon, for a surgical spine opinion. Dr. Walsh advocated for conservative treatment.

The Commission further finds that Dr. Goldberg’s opinion regarding causal connection and Petitioner’s ability to be able to work in 2017 is more persuasive than that of Dr. Nagar’s opinions relating Petitioner’s ongoing conditions to the subject accident. Dr. Nagar testified that she saw Petitioner only eleven times in person and twice telephonically. (PX7, 46, T. 791) On December 23, 2019, Dr. Nagar’s office notes document that Petitioner had been seeing a psychiatrist and felt that had been “more beneficial in coping (sic) mechanisms of pain.” (PX5, T. 721)

The Commission further notes Petitioner is not claiming brain injuries as a result of the subject work injuries. (PX7, 25) Dr. Nagar testified that Petitioner underwent a brain MRI on February 1, 2018. *Id.* Dr. Nagar further testified that “this MRI of February 2018 noted the presence of volume loss, which means that the brain had lost some of its volume bilaterally which is on both sides, in the frontal as well as temporal areas. And then also in the parietal area of the brain-it was mild, but it was evident on this scan...it did reveal predominant volume loss of the brain.” *Id.* The February 1, 2018, brain MRI showed a change from her previous MRI, the significance of which, in Dr. Nagar’s opinion, “the volume of the brain had started to shrink down.

Although mild, it was a change.” (PX7, 25-26) Dr. Nagar also testified she wrote a narrative report on June 15, 2020, and mentioned the MRI of the brain. (PX7, 41) Dr. Nagar testified she was interested in the reason Petitioner’s reflex time and responses to being asked to do the tasks in a neurological exam were slowing down. Dr. Nagar testified that there had been consistent slowing of the responses. *Id.* Dr. Nagar also testified that Petitioner’s brain MRI showed bifrontotemporal parietal volume loss that Dr. Nagar believed “has something to do with Petitioner’s capabilities in returning to a fully functional neurological cognitive, you know, conscious sort of light work.” (Px7, 41-42)

Further, Dr. Nagar testified on cross-examination that Petitioner is probably at a new baseline, but Dr. Nagar conceded that she did not know what Petitioner’s baseline was before she saw her in March 2017. (PX7, 55, T. 793) The Commission finds Dr. Nagar’s opinion is therefore not credible and is entitled to little weight. See, e.g., *Sunny Hill of Will County v. Ill. Workers’ Comp. Comm’n*, 2014 IL App (3d) 130028WC, 14 N.E.3d 16 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

In reaching the conclusion that Dr. Goldberg’s opinion was more reliable than Dr. Nagar’s opinions, the Commission relies upon the afore-referenced reasons and the following:

- Dr. Nagar testified that the mechanism of injury was, “related to an accident in the sense she was driving a bus which had some sort of a mechanical failure and she was trying to get the bus to a safer place and had tried to, you know, have the brakes, and resulted in muscle spasm and pain which led her to be taken to the local emergency room.” (Px7, 13, T. 782)
- Dr. Nagar did not have or review Petitioner’s ER records from the date of accident, December 3, 2016. (P7, 50, T. 792)
- Dr. Nagar performed no Waddell testing. (PX7, 49)
- Dr. Nagar did not provide psychiatric services to Petitioner. (PX7, 54, T. 793)
- Dr. Nagar testified that “the medications that initially were used, metazalone which helps with pain, also helps with arthritic pain. So it has definitely crossed my mind whether the widespread pain could be fibromyalgia or generalized inflammatory arthritis of a different kind...”

The Commission further reaches the conclusion that Dr. Goldberg’s opinions regarding Petitioner’s abilities as they are related to the work accident are more reliable than Dr. Nagar’s opinions based upon the Petitioner’s entire treatment record indicating a myriad of diagnoses and treatment that are unrelated to the subject accident including depression, anxiety, (PX5, T. 541) fibromyalgia (T. 1547) Sjogren’s disease, (T. 1043, 1146), and rheumatoid arthritis. (T. 541, 1044,

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1547) Petitioner reported to the vocational consultant, Ed Steffan, that she is treating with Dr. Denise Vergas, Rheumatologist, Lake Forest, IL for “rheumatology, Sjogren’s syndrome, organs and fibromyalgia.” (PX9DepX2, 22) The Commission notes that Dr. Vergas’s records are not in evidence.

On May 25, 2021, Petitioner was diagnosed by Dr. Emily Gilley with very mild bilateral carpal tunnel syndrome, on review of an EMG Nerve Conduction Study. Dr. Gilley’s Assessment and Plan, however, notes the majority of Petitioner’s symptoms, a diffuse vague pain in the hands, may be consistent with her fibromyalgia symptoms. Dr. Gilley noted Petitioner was following up with her Rheumatologist the following month. (PX5, 384-388, T. 766- 770) The Commission finds Petitioner’s ongoing diffuse symptoms after May 8, 2017, are not related to the subject work accident.

The Commission further notes that Dr. Nagar’s records are replete with documentation that Petitioner had hearing loss after the subject accident. However, Petitioner had cerumen impaction (earwax) removal that was removed from her bilateral ears on May 6, 2021. The Petitioner was better after cerumen impaction removal. (PX5, 379, T. 761)

The Commission also notes that Ed Steffan’s March 30, 2021, report notes that Petitioner reported that she has a vehicle for transportation and possesses a valid Illinois Commercial Driver’s License. (PX9DepX2, 26) Petitioner testified that she has never driven a car since the work accident. (T. 55) The Commission finds that Petitioner must have driven a car since 2016 in order to possess a valid Illinois Commercial Driver’s license more than four years after the accident.

Based upon all of the afore-referenced reasons, the Commission concludes that Petitioner was at maximum medical improvement (“MMI”) as of May 8, 2017, which is the date of Dr. Goldberg’s Opinion Report and Addendum Opinion Reports. The Commission finds that any medical treatment thereafter is unrelated to the subject accident, including the lumbar fusion procedure of September 28, 2021, and subsequent in-patient rehabilitation, five years after the work accident. The Commission notes that the available medical records do not support a finding of causation as to the lumbar fusion or inpatient rehabilitation and the subject work accident.

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 Commission strikes the first paragraph under Issue J, and substitutes the following paragraph:

Consistent with the Commission’s prior findings, the Commission finds that the medical services that were provided to Petitioner through May 8, 2017, the date of MMI, were reasonable and necessary. As the Commission has found that Petitioner’s treatment was reasonable and

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necessary through May 8, 2017, the Commission further finds that all bills, as provided in PX13 and supported by a treatment record within the records offered, are awarded through May 8, 2017, and that Respondent is liable for payment of said bills pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act except bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, bills for treatment of cerumen impaction and bilateral hands.

Issue K, whether Petitioner is entitled to TTD benefits and maintenance benefits.

The Commission strikes the second and third paragraphs and substitutes the following:

Based on the foregoing causation findings, the Commission finds that Petitioner is entitled to TTD benefits from December 4, 2016 through May 8, 2017, the date Dr. Goldberg opined Petitioner was at MMI and able to return to full-duty work without restrictions. Petitioner did not return to work thereafter. Petitioner testified that she is receiving Social Security Disability Insurance (SSDI). (T. 63) Therefore, the issue of maintenance is moot.

Issue L, as to the nature and extent of the injury.

The Commission strikes paragraphs one through eight and substitutes the following paragraphs: Based on the foregoing causation findings, Petitioner's admission that she has not looked for a job since the December 3, 2016 accident, and Petitioner seeking and receiving SSDI, the Commission finds that Petitioner is entitled to an award under §8(d)2 and that a wage-differential award is inappropriate.

According to Section 8.1b(b) of the Act, for injuries that occur after September 1, 2011, 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 AMA guidelines;
- (ii) The occupation of the injured employee;
- (iii) The age of the employee at the time of the injury;
- (iv) The employee's future earning capacity; and
- (v) Evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b)

In considering the degree to which Petitioner is permanently partially disabled as a result of the work-related accident, the Commission weighs the five factors in Section 8.1b(b) of the Act as follows:

- (i) No AMA impairment rating was submitted by either party, so this factor is given no weight.

- (ii) Petitioner was employed as a bus driver. Petitioner did not return to work for Respondent following the December 3, 2016, accident. Petitioner has not looked for employment since the December 3, 2016 accident. Thus, this factor is assigned greater weight.
- (iii) Petitioner was 57 years old at the time of the accident, approaching the end of her work life. This factor is assigned some weight.
- (iv) There is evidence in the record that Petitioner could return to work as a bus driver on May 8, 2017, with no restrictions according to Dr. Goldberg. Thus the evidence presented at the time of Dr. Goldberg's opinion reflected that Petitioner had no loss of future earning capacity as a result of the work accident. This factor is assigned some weight.
- (v) Regarding evidence of disability corroborated by the treating medical records, Petitioner was diagnosed with a cervical and lumbar strain as a result of the work related accident of December 3, 2016. She was off work commencing December 4, 2016, and underwent conservative treatment until she was released to return to full duty work as a bus driver by Dr. Goldberg on May 8, 2017. Petitioner did not attempt to return to work and underwent additional medical treatment for unrelated conditions. Petitioner applied for and is receiving Social Security Disability Insurance.

The Commission infers Petitioner had unrelated health issues precluding her from returning to work at the time Dr. Goldberg opined that she was at MMI from her work injury on May 8, 2017. At arbitration, Petitioner testified that she has difficulty walking, that she cannot focus, that she cannot do her normal duties, and that she cannot walk without assistance. The Commission, however, notes that Petitioner's overall symptoms and treatment history is vague, the Commission is not privy to some of her treatment records and that unrelated conditions, including brain/cognitive issues, may be contributing to Petitioner's difficulty with walking and focus. The Commission again notes that Petitioner makes no claim that the accident brought about brain/cognitive issues and that the available medical records do not support a finding of causation as to the lumbar fusion she underwent five years after the accident.

Upon consideration of the foregoing evidence and factors, the Commission finds that Petitioner sustained permanent partial disability to the extent of 10% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on June 23, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,104.00 per week for a period of 22-2/7 weeks, commencing December 4, 2016, through May 8, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of \$36,906.48 for TTD paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$775.18 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 10% person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services through May 8, 2017, as provided in PX13 and supported by a treatment record within the records offered, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment after May 8, 2017, and for any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in RX4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

IT IS FURTHER ORDERED BY THE COMMISSION Petitioner's request for penalties and attorney's fees under §19(k), §19(l) and §16 is denied.

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

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

Based upon the named Respondent herein, no bond is set by the Commission. 820 ILCS 305/19(f)(2). The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 26, 2026

KAD/swj
O112525

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/s/ Kathryn A. Doerries
Kathryn A. Doerries

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC039041
Case Name	Wandzella King v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Thomas Seymour
Respondent Attorney	Elizabeth Meyer

DATE FILED: 6/23/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 21, 2023 5.17%

/s/ Ana Vazquez, Arbitrator

Signature

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**

Wandzella King

Employee/Petitioner

v.

Chicago Transit Authority

Employer/Respondent

Case # **16** WC **039041**

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 **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **November 30, 2022**. 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 **12/3/2016**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$86,112.00**; the average weekly wage was **\$1,656.00**.

On the date of accident, Petitioner was **57** 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 **\$36,906.48** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$36,906.48**.

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

ORDER

Respondent shall pay reasonable and necessary medical services through March 17, 2020, as provided in Px13 and supported by a treatment record within the records offered, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in Rx4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall pay to Petitioner temporary total disability benefits of **\$1,104.00/week** for **171 3/7 weeks**, commencing December 4, 2016 through March 17, 2020, as provided in Section 8(b) of the Act. Petitioner's claim for maintenance benefits is **denied**.

Respondent shall pay Petitioner permanent partial disability benefits of **\$775.18/week** for **100 weeks**, because the injuries sustained caused the **20% loss of the person as a whole**, as provided in Section 8(d)(2) of the Act.

Petitioner's request for penalties/attorney's fees under Sections 19(k), 19(l) and 16 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.

Ana Vazquez

JUNE 23, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on November 30, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez on Petitioner's Request for Hearing. The issues in dispute are (1) causal connection, (2) earnings/AWW, (3) unpaid medical bills, (4) temporary total disability ("TTD") benefits and maintenance benefits, (5) nature and extent of the injury, and (6) penalties/attorney's fees under Sections 19(k), 19(l), and 16. Arbitrator's Exhibit ("Ax") 1. All other issues are stipulated. The Parties stipulated that Respondent is entitled to a credit in the amount of \$36,906.48 for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

FINDINGS OF FACT

Petitioner testified that she was a bus driver for Respondent for 17 years. Transcript of Proceedings on Arbitration ("Tr.") at 13. Petitioner testified that her duties as a bus driver were "[n]othing but driving, driving to and from, you know, passengers. That's it." Tr. at 23.

Petitioner testified that in her 17 years of being a bus driver, she did not ever have any back problems. Tr. at 55.

Accident

Petitioner testified that on December 3, 2016 and while she was at work, the brakes and the hydraulics broke from underneath the bus. Tr. at 13. Petitioner testified that she was on Belmont going eastbound, traffic was crowded, and the bus was filled to capacity. Tr. at 13-14. Petitioner testified that the bus was going "not even 20 miles an hour." Tr. at 56. Petitioner testified that the first indication that there was an issue with the bus, was that "the brakes and stuff wouldn't apply all the way down and stuff and the bus was jumping." Tr. at 14. Petitioner explained that "jumping" meant the bus was bouncing, as if the shocks had given way. Tr. at 14. Petitioner testified that "when the buses bounce or whatever, you just grip the steering wheel tighter and then you try to apply the brakes." Tr. at 14. Petitioner testified that she tried to apply the brakes, and the brakes did not work. Tr. at 15. Petitioner testified that "I was holding onto the steering wheel, and then I was practically almost standing on the brakes trying to give it as much, you know, strength that I could with my foot, you know, to keep the pedals – you know, keep them all the way down." Tr. at 15. Petitioner testified that the steering wheel locked, it did not give or turn. Tr. at 16. Petitioner testified that the bus eventually stopped in the middle of the street. Tr. at 16. Petitioner then called "control" and a manager came out to the scene. Tr. at 18. A passenger stayed with Petitioner. Tr. at 16, 56-57.

Petitioner testified that while waiting for the manager to arrive and talking to "control," her body went into shock and started trembling. Tr. at 18. Petitioner testified that her back started pulsating. Tr. at 19. Petitioner does not know if the passenger or "control" called an ambulance. Tr. at 18-19.

On cross examination, Petitioner testified that she also hit her head, that she told her other doctors that she hit her head, and that she was diagnosed with a concussion at Community First Hospital. Tr. at 61-62.

Medical records summary

At Community First Medical Center, Petitioner was admitted through the emergency room. Petitioner's Exhibit ("Px") 2. Petitioner presented with body aches. Px2 at 17. Petitioner reported that she worked at Respondent as a bus driver, and that the power steering gave out on the bus while she was driving. Px2 at 17. Petitioner also reported that she had to use all of her strength to steer the bus axis. Px2 at 17. Petitioner complained of bilateral upper neck, bilateral shoulder, bilateral low back, and bilateral leg pain. Px2 at 17, 29. Petitioner denied weakness of any of her extremities, numbness or tingling to her extremities, head, neck, or back injury, loss of consciousness, nausea or vomiting, shortness of breath, or abdominal pain. Px2 at 17. X-rays were obtained. Px2 at 19. The impressions of the lumbosacral x-rays were (1) slight (grade I) anterior spondylolisthesis of L4 in relation to L5, and an MRI was suggested to assess the extent of not infrequently associated subarticular spinal stenosis, (2) degenerative changes of the lumbar spine, most pronounced at L2-3 and L4-5, and (3) minimal degenerative changes of the bilateral hips. Px2 at 19-20. The x-rays of the cervical spine revealed degenerative changes of the cervical spine. Px2 at 20. Petitioner's diagnoses were muscle strain, acute bilateral low back pain without sciatica, and acute cervical strain. Px2 at 20. Petitioner was prescribed ibuprofen, acetaminophen, and Robaxin. Px2 at 21. Petitioner was discharged from Community First Medical Center's Emergency Department on December 3, 2016, with the mobility at departure noted as "wheelchair." Px2 at 45. Petitioner testified that she was not able to walk out of the hospital and that she left Community First Hospital in a wheelchair given to her by the hospital. Tr. at 21. Petitioner also testified that Respondent had a supervisor pick her up from the hospital. Tr. at 21. Petitioner testified that she next went to Concentra, and that "[t]hey had somebody take me to Concentra," and that Respondent told her to go to Concentra. Tr. at 22.

Petitioner presented at Concentra on December 5, 2016 and was seen by Dr. Daniel Paloyan. Px3 at 8-13. Petitioner reported that she was driving a bus for Respondent at about five miles per hour, and that as she was stopping, the hydraulic system failed, and she had to exert great force to keep the bus steady, and it finally stopped. Petitioner also reported that she later noted pain in multiple areas, including the wrists, hands, elbows, shoulders, neck, upper and lower back, and knees. Petitioner reported 10/10 pain. Petitioner's diagnoses were sprains of the bilateral wrists and bilateral hands, strains of the thoracic region, lumbar region, bilateral knees, bilateral shoulders, and left biceps, and acute strain of neck muscle. Petitioner was referred for physical therapy, and no medications were prescribed. Petitioner was allowed to return to modified work with restrictions including sitting 98% of the time, no climbing, and no operating a bus. Petitioner testified that Respondent did not accommodate the restrictions from December 5, 2016. Tr. at 24.

Petitioner followed up with Dr. Paloyan at Concentra on December 7, 2016 and December 14, 2016. Px3 at 15-17, 28-33. On December 7, 2016, Petitioner's symptoms, diagnoses, and restrictions were unchanged. On December 14, 2016, Petitioner reported some improvement, and Dr. Paloyan noted that Petitioner was walking with a cane and remained flexed forward when standing. Dr. Paloyan also noted that Petitioner's symptoms were unchanged. Petitioner's diagnoses were unchanged, and Petitioner was prescribed Ibuprofen, metaxalone, and Point Relief 30% roll on. Petitioner was allowed to return to modified work with the restrictions of sitting 90% of the time, no climbing, no operating a bus, no reaching above shoulders, and no reaching above head.

Petitioner participated in 4 physical therapy sessions at Concentra from December 7, 2016 to December 14, 2016. Px3 at 18-28. Petitioner testified that the physical therapy sessions at Concentra "made matters worse." Tr. at 25.

Petitioner participated in 24 sessions of physical therapy at ATI Physical Therapy from December 14, 2016 through February 21, 2017. Px4. Pain, tightness, and spasms were noted throughout the records. Px4. At discharge, Petitioner's assessment noted that Petitioner continued to have muscle spasms, cramping, tightness, and pain throughout the lower and upper extremities, and torso, especially the biceps and hamstrings. Px4 at 78. It was also noted that Petitioner was unable to grip and hold things due to decreased strength and spasms. It was also noted that Petitioner was having pain and spasms bad enough that Petitioner and the treating physical therapist could not move Petitioner's arms or legs and if attempted, it would cause increased pain. It was noted that Petitioner had made little to no progress over the course of therapy and that she would benefit from an EMG to determine the severity and source of her muscle spasms that had been limiting her ability to participate in upper and lower extremities activities. Px4 at 78.

On March 24, 2017, Petitioner presented to the emergency room at Northwestern Lake Forest Emergency Department with body spasms. Px5 at 2. Petitioner testified that she went to the Northwestern Emergency Room because she was still in pain, her pain was worse, and that "[m]y whole body was just, like, out of whack, you know, from the nerves, you know, the muscles. Everything had, like, locked up and stuff. The spasms was just, like, swelling up everywhere." Tr. at 28. Petitioner's diagnoses were back pain and diffuse body pain. Px5 at 18. Petitioner was admitted and was discharged on March 26, 2017. Px5 at 21. Petitioner's cervical, thoracic, and lumbar spines CT impressions were (1) multi-level, age-uncertain, but probably chronic, minimal-to-mild asymmetric vertebral body height loss, most notable right anterolaterally at C6, followed by adjacent levels, contributing to mild diffuse levo-kypnosis of the cervical spine and mild Grade I right anterolisthesis of L4 and L5 further contributing to a mild lumbosacral dextro-lordosis with minimal compensatory thoracic multi-apex scoliosis, (2) multilevel degenerative disc disease and facet arthropathy, with associated central spinal canal stenosis and neural foraminal narrowing, and (3) bilateral sacroiliac joint osteoarthritic degenerative disease. Px5 at 45, 80-85. Petitioner's brain CT scan of March 24, 2017 revealed no acute intracranial abnormality. Px5 at 38. The impressions of Petitioner's cervical, thoracic, and lumbar spines MRIs of March 24, 2017 were (1) extensive midline posterior subcutaneous soft tissue edema of the lumbar spine, probably related to Petitioner's recent trauma, (2) degenerative changes, (3) Grade I anterolisthesis of L4 on L5, and (4) no acute bone marrow edema or acute ligamentous injury. Px5 at 48, 236-242. Petitioner was seen by Dr. Charulatha Nagar on March 25, 2017 for consultation. Px5 at 56. Dr. Nagar noted that Petitioner had undergone CT scans of the cervical, thoracic, and lumbar spines without any acute findings. Px5 at 57. Regarding laboratory data, Dr. Nagar noted that the CT of the thoracic and lumbar spines revealed right anterolisthesis of the L4-5, with mild lumbosacral dextro-lordosis, with some compensatory scoliosis. Px5 at 58. Dr. Nagar also noted that the CT scan done at Vista in December 2016 showed no abnormalities; however, marginal osteophytic complex and foraminal narrowing at C6 and C7 were seen. Px5 at 58. Dr. Nagar's impressions noted that Petitioner had been seen by a pain specialist and diagnosed with fibromyalgia. Px5 at 58. Dr. Nagar recommended a full work up, including an MRI of the brain and MRIs of the cervical, thoracic, and lumbar spines. Px5 at 58. Petitioner's diagnoses at discharge were concussion and edema of cervical spinal cord and fibromyalgia. Px5 at 59. A concern for a possible malingering component was noted at discharge. Px5 at 60. Petitioner was given a Medrol dose pack and referred to a post-concussive rehabilitation program. Px5 at 60.

Petitioner saw Dr. Lynn Piest on April 3, 2017 for follow up after admission for back pain and extensive body aches. Px5 at 577. Petitioner's diagnoses were body aches and anemia. Px5 at 577.

Petitioner followed up with Dr. Nagar on April 4, 2017. Px5 at 245, 585-589. At that time, Petitioner's diagnoses were (1) motor vehicle accident, with widespread skeletal pain and MRI evidence of paraspinal muscle edema, (2) gait instability, (3) dysphagia, (4) hearing loss, left, and (5) cognitive deficit as late effect of traumatic brain injury. Px5 at 245. Dr. Nagar recommended an ENG evaluation, physical therapy, speech therapy, and dysphagia therapy. Dr. Nagar also noted that Petitioner was urged not to drive, operate heavy machinery, or lift heavy objects.

Petitioner saw Dr. Michael Walsh on April 14, 2017 for a chief complaint of "my whole body hurts." Px5 at 624-634. Dr. Walsh noted that on exam, Petitioner put forth very poor effort with strength/sensory testing, making an assessment very difficult. Px5 at 624. Dr. Walsh noted that he reviewed MRIs of March 24, 2017 and noted that they demonstrated diffuse spinal degeneration and some relatively advanced degeneration of the lumbar spine at L4-5, where there was a mild grade I spondylolisthesis and a moderate degree of central canal stenosis. Px5 at 625. Dr. Walsh noted that Petitioner presented with diffuse body pain in the setting of lumbar stenosis and spondylolisthesis, and that at that time, it was difficult to correlate any particular symptoms with her lumbar stenosis. Px5 at 626. Dr. Walsh noted that he advocated for extensive conservative treatment and Petitioner was given a pain management referral. Px5 at 626.

Petitioner was seen by Dr. Vidya Ramanavarapu on April 26, 2017 for evaluation and treatment of her low back pain. Px5 at 315. Dr. Ramanavarapu noted that it was difficult to conduct a full examination on Petitioner given her deconditioning and inability to cooperate with the exam due to her pain. Px5 at 317. Dr. Ramanavarapu noted that Petitioner had diffuse body aches and myofascial pain as a result of the accident in December 2016. Dr. Ramanavarapu agreed with conservative management and agreed that Petitioner would benefit from a rehabilitation program. Dr. Ramanavarapu also recommended Petitioner increase her gabapentin to 600 mg. She also noted that Petitioner was a candidate for a lumbar epidural steroid injection at either L4-5 or L5-S1 to help address some of her low back pain and left lumbar radicular symptoms. Px5 at 317.

Petitioner returned to Dr. Piest on May 4, 2017, at which time Dr. Piest noted that Petitioner continued to have diffuse body aches and questionable fibromyalgias. Px5 at 660. Dr. Piest also noted that Petitioner was still unable to work because she could not sit for an hour. Px5 at 660.

Petitioner underwent a lumbar epidural steroid injection at the L4-5 level targeted towards the left side on May 11, 2017. Px5 at 329-330. Petitioner returned to Dr. Nagar on May 14, 2017 and returned to Dr. Piest on May 19, 2017. Px5 at 666-674. On May 19, 2017, Dr. Piest noted that Petitioner did not report any improvement following the epidural steroid injection. Px5 at 674.

Petitioner underwent a second epidural steroid injection on June 12, 2017. Px5 at 365.

Petitioner next saw Dr. Nagar on July 13, 2017. Px5 at 679-681. Petitioner's Zanaflex was decreased. Dr. Nagar also recommended physical therapy for vestibular and balance. Petitioner also followed up with Dr. Walsh on July 13, 2017. Px5 at 691. She was seen by Laura Bailey, APN. CNP. It was noted that Petitioner reported that each of the steroid injections helped with pain for one day, but the pain returned. Petitioner reported being most bothered by headaches and muscle spasms in her neck, down her arms and shoulders, in her torso, chest, low back, and down her legs. She also complained of low back pain, and pain and tingling that ran down her left buttocks to her posterior leg and wrapped around her left ankle region. She also complained of bilateral foot numbness and bilateral leg weakness. It was also noted that Petitioner stood upright with no obvious gait disturbances and was able to get into and

out of a chair without any difficulty, and that on exam, Petitioner put forth little effort making it hard to judge her overall strength. Physical therapy for Petitioner's overall body pain was recommended. Petitioner also saw Dr. Piest on July 13, 2017. Px5 at 695-696. Dr. Piest noted that Petitioner was still unable to work.

Petitioner followed up with Dr. Piest on August 28, 2017 and with Laura Bailey, APN, CPN on August 29, 2017. Px5 at 702-703, 709-710. On August 29, 2017, it was noted that there was nothing on MRI that indicated that Petitioner needed surgery at that time, and conservative treatment was again recommended. Petitioner followed up with Dr. Nagar on September 13, 2017. Px5 at 716-718.

Petitioner underwent a lumbar spine MRI on September 28, 2017, which demonstrated (1) Grade I anterolisthesis of L4 and L5, stable since prior study, and (2) degenerative changes of the lumbar spine, mildly worsened at L2-3 and L3-4 level since prior study, and the worst level noted at L4-5 with significant spinal canal stenosis and left-sided neural foramina narrowing. Px5 at 377- 378.

On January 22, 2018, Petitioner followed up with Dr. Nagar. Px5 at 728-733. Dr. Nagar noted that Petitioner continued to have significant unsteadiness of gait and pain. Dr. Nagar recommended continued physical therapy and repeat imaging. Petitioner was urged to not drive again, to not operate heavy machinery, and to not lift heavy objects.

On January 29, 2018, Petitioner was seen by Dr. Ramanavarapu and underwent a lumbar epidural steroid injection at the L5-S1 level targeted towards the right side. Px5 at 753-755. Dr. Ramanavarapu noted that Petitioner reported that the injection of June 2017 helped with her left-sided pain symptoms and that her right-sided back pain and radicular pain was bothering her more. Dr. Ramanavarapu also noted that the repeat MRI of September showed progression of stenosis of the L4-5 level and worsening narrowing at the L5-S1 level.

Petitioner underwent cervical and lumbar spine MRIs on February 1, 2018. The MRIs demonstrated (1) slightly limited exam, (2) mildly exaggerated thoracic kyphosis and nonspecific straightening of the cervical spine in the sagittal plane and mild Grade I anterolisthesis of L4 on L5 grossly unchanged, (3) multilevel degenerative disc disease and facet arthropathy, with associated central spinal canal stenosis, neural foramina narrowing, and mass effect upon neural elements. In the cervical region, the overall most significant findings were noted at C5-6 and C6-. In the thoracic region, the overall most significant findings were noted at T7-8, lessening through T5-6. Lumbar vertebral column curvature/alignment abnormalities and degenerative disease were grossly unchanged, again overall most significant at L4-5, and (4) probable bilateral sacroiliitis was only incidentally demonstrated, left worse than right and not significantly changed. Px5 at 757-763.

Petitioner followed up with Dr. Nagar on February 3, 2018, at which time Dr. Nagar recommended repeat MRIs and continued physical therapy. Px5 at 728-730. Petitioner's restrictions were unchanged.

Petitioner returned to Dr. Piest for follow up on February 13, 2018. Px5 at 768-769. Dr. Piest recommended Petitioner follow up with Dr. Walsh.

Petitioner followed up with Dr. Nagar and with Dr. Piest on April 23, 2018. Px5 at 775-778, 796.-799. Dr. Nagar noted that Petitioner had not made progress and continued to have difficulty with unsteady balance and pain. Dr. Nagar continued to recommend that Petitioner not drive, operate heavy machinery,

or lift heavy objects. Dr. Piest noted that Petitioner continued with difficulty with gait and use of a walker. Dr. Piest recommended Petitioner continue with physical therapy.

Petitioner next saw Dr. Nagar on August 20, 2018, at which time Dr. Nagar noted that Petitioner had cervical degenerative disc disease and widespread degenerative disc disease throughout the cervical, thoracic, and lumbar spines. Px5 at 802-806. She also noted that Petitioner was wheelchair-bound. Dr. Nagar's diagnosis was motor vehicle accident with sequelae with extensive paraspinal muscle edema on MRI done in March.

On August 29, 2018, Petitioner underwent a right interlaminar epidural steroid injection at L5-S1. Px5 at 807-808.

Petitioner returned to Dr. Nagar on March 4, 2019 and June 4, 2019. Px5 at 839-843, 869-873. On June 4, 2019, Dr. Nagar noted that Petitioner's symptoms were unchanged, and that Petitioner continued to have chronic pain disorder and gait instability. Dr. Nagar also noted that Petitioner was making little progress with disrupted physical therapy because of lack of insurance, and that Petitioner had made some recovery where she could sit for an extended period. Dr. Nagar noted that Petitioner remained disabled from work.

Petitioner participated in 8 sessions of therapy, including aquatic therapy, at Northwestern Medicine from July 8, 2019 through August 22, 2019. Px5 at 890-972.

On August 14, 2019, Dr. Nagar noted that Petitioner reported that she walked with a walker more steadily and felt that her balance was improved. Dr. Nagar also noted that Petitioner continued with widespread pain and discomfort.

On September 30, 2019, Petitioner underwent a right interlaminar epidural steroid injection at L4-L5. Px5 at 973-977. Petitioner testified that when she saw Dr. Ramanavarapu on September 30, 2019, the one-year gap in treatment was because "COVID had hit. They weren't allowing nobody to come into the hospital," and because she was not able to schedule appointments because she did not have insurance. Tr. at 43-44. Petitioner testified that she did not have insurance after she was let go. Tr. at 41. Petitioner testified that she applied for public aid in August 2018 and was able to continue treatment. Tr. at 41.

Petitioner again saw Dr. Nagar on October 15, 2019, at which time Dr. Nagar's assessment was chronic pain musculoskeletal secondary to motor vehicle accident with gait abnormalities, slow and minimal, with continued improvement with supportive care physical therapy. Px5 at 314-317. Dr. Nagar noted that Petitioner endorsed a 10% to 15% improvement.

Petitioner participated in physical therapy, including aquatic therapy, from November 2019 through February 2020. Px5 at 996-1089.

Petitioner followed up with Dr. Nagar on December 23, 2019 and March 17, 2020. Px5 at 1036-1039, 1092-1093.

On December 30, 2020, Petitioner underwent a left interlaminar epidural steroid injection at L5-S1. Px5 at 1099-1100.

Petitioner testified that Dr. Nagar referred her to Dr. Juan Alzate in August 2021. Tr. at 46.¹ On September 28, 2021, Petitioner presented at Advocate Condell Medical Center and underwent an L4-5 bilateral laminectomy, bilateral facetectomy, foraminotomies, L4-5 microdiscectomy, interbody fusion using a titanium graft Magnifuse and autologous bone fusion with transpedicular screws between L4-5, correction of spondylolisthesis, fusion with autologous bone and Magnifuse with intraoperative microscope, fluoroscope, MEP, and SSEP of the upper and lower extremities throughout the case. Px10 at 153. The procedure was performed by Dr. Juan Alzate. Petitioner's postoperative diagnoses were lumbar spondylosis, spondylolisthesis, and spinal foraminal stenosis at L4-5. Petitioner was discharged from Advocate Condell Medical Center on October 7, 2021 and transferred to Promedica Skilled Nursing Facility Libertyville, where she was discharged on November 20, 2021. Px10 at 139, Px11. Petitioner testified that the surgery relieved some of her pain. Tr. at 47.

Independent Medical Examination ("IME") Report and IME Addendum Report by Respondent's Section 12 examiner, Dr. Edward J. Goldberg

Dr. Goldberg prepared an IME Report dated May 8, 2017. Respondent's Exhibit ("Rx") 1.

Dr. Goldberg summarized the records he reviewed and his physical examination findings. Rx1 at 1-3. Dr. Goldberg reviewed the cervical MRI report of December 19, 2016, the lumbar spine CT scan report of February 8, 2017, and the cervical, thoracic, and lumbar spine CT scan reports of March 24, 2017. Rx1 at 2. Dr. Goldberg noted that the films for these particular studies were not available. Rx1 at 2. On physical examination, Dr. Goldberg noted that Petitioner needed his and her son's help getting out of the wheelchair that she arrived in and onto the exam table. He further noted that Petitioner's physical examination revealed (1) 5 degrees of cervical flexion, extension, and bilateral rotation, (2) a 3/5 motor exam from C5-T1 and L3-S1, (3) diminished sensation C5-T1 and L3-S1 bilaterally to pinprick, (4) biceps, triceps, Achilles, and patellar reflexes were +2, (5) no atrophy, (6) no clonus or Hoffman's, (7) she held her lumbar spine in 30 to 40 degrees of forward flexion when ambulating with a cane, (8) compression of the shoulders, rotation of trunk, palpation of the skin and lumbar spine reproduced increasing pain, and (9) her lumbar motion could not be tested because she reported too much pain. Rx1 at 2-3.

Dr. Goldberg noted that at that time, he could not arrive at a diagnosis of her cervical and lumbar spines without reviewing all MRIs and CTs. Rx1 at 3. He opined that Petitioner had an injury to her cervical and lumbar spines, but that Petitioner's examination did not appear consistent with any nerve compression type symptoms. Rx1 at 3. He noted that he believed that Petitioner's treatment to date, including the workup, had been appropriate. Rx1 at 3. He noted that he could not comment upon any additional treatments until he reviewed the diagnostic films. Rx1 at 3. He noted that Petitioner could not work full duty and that Petitioner was not at MMI. Rx1 at 3. He further noted that the degree of disability at that time was moderate, and that in essence, Petitioner had multiple complaints and anatomically, he did not see a clear neurological picture and needed to review the diagnostic films.

Dr. Goldberg prepared an IME Addendum Report dated May 8, 2017. Rx2. Dr. Goldberg noted that he had reviewed the actual films of multiple diagnostic studies. Dr. Goldberg noted that based upon the records, he felt that Petitioner had an injury to her cervical and lumbar spine, and that based upon the mechanism, it was likely some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines, as well as cervical and lumbar strains. He noted that Petitioner's examination did not

¹ Records for treatment with Dr. Nagar after March 17, 2020 were not offered.

correlate with what was seen on MRI, and that he found no contraindication from the spine point of view for Petitioner returning to work as a bus driver. Dr. Goldberg noted that Petitioner reported that she developed deafness in her left ear and diffuse numbness from the left ear all the way to her left foot after the accident, which did not correlate with the MRI findings. He noted that from a spinal point of view, Petitioner was at MMI and could return to work full duty. He did not comment on whether there was a psychological component as it was beyond his expertise.

Earnings/TTD

Petitioner testified that she gave a copy of Dr. Goldberg's IME Report to Mr. Hernandez, her supervisor. Tr. at 50. Petitioner testified that she was not offered any modified duty by Mr. Hernandez or by anyone at Respondent. Tr. at 53. Petitioner did not hear of any follow-up from Respondent after giving her supervisor a copy of Dr. Goldberg's IME Report. Tr. at 53.

Petitioner testified that she was earning \$33.00 or \$34.00 per hour while working at Respondent. Tr. at 54. Petitioner testified that she worked "12, 14 hours" shifts. Tr. at 38.

Petitioner testified that at the time of arbitration, she was not an employee of Respondent. Tr. at 40. Petitioner testified that she never received a separation notice from Respondent. Tr. at 40-41. Petitioner testified that she has not looked for other jobs since December 3, 2016. Tr. at 62, 63.

Vocational rehabilitation

Petitioner testified that she recalled speaking with Mr. Edward Steffan, a vocational rehabilitation counselor, regarding job opportunities. Tr. at 48-49. On cross examination, Petitioner testified that she spoke with Mr. Steffan twice.

Petitioner testified that prior to working at Respondent, she worked for Pepsi as an end cap distributor, setting up displays. Tr. at 54. Petitioner testified that she was in her second year of college when asked about her highest level of education. Tr. at 54.

Current condition

Petitioner testified that she has not been able to drive any motor vehicle since December 3, 2016. Tr. at 32.

Petitioner testified that at the time of arbitration, it was difficult for her to walk, she could not focus, she could not do her normal duties, and that she had to rely on someone else to take her places and do things. Tr. at 54. Petitioner testified that she cannot walk without assistance. Petitioner also testified that she was still treating and had last seen a doctor two weeks prior to arbitration, and had a visit scheduled for the month following arbitration. Tr. at 62-63.

Testimony of Dr. Charulatha Nagar

Dr. Charulatha Nagar testified on behalf of Petitioner by way of evidence deposition taken on September 11, 2020. Px7. Dr. Nagar is a neurologist with a specialty in neuromuscular medicine. Px7 at 5-6.

Dr. Nagar testified that the lumbar spine MRI of March 24, 2017 revealed the presence of degenerative changes with foraminal narrowing. Px7 at 8. Dr. Nagar testified that the cervical spine MRI of March 24, 2017 showed mild to moderate degree changes from C3 to C7, with annular bulges, osteophytes, and mild spinal canal stenosis, as well as a small disc that was posteriorly herniated at C4 and C5. Px7 at 9-10. Dr. Nagar explained that the moderate/severe central spinal canal stenosis would cause Petitioner pain. Px7 at 10. Regarding the annular bulges, Dr. Nagar further explained that the bony changes along with the disc bulges narrowed the nerve exits of the foramina, which often caused pain clinically and could cause widespread pain and weakness depending on the combination in the levels and sensory changes such as numbness, pins and needles, or tingling. Px7 at 10. Regarding the effacement of the left L4 nerve root seen on the cervical spine MRI, Dr. Nagar explained that the disc and intervertebral disc seemed to be dried out and had arthritis or facet arthropathy and it was pushed out to the far left of the center resulting in the exiting left-sided nerve root to be effaced or “squished.” Px7 at 12. There was also right-sided foraminal narrowing of the L4 nerve root, which together with the left-sided effacement, resulted in moderate to severe degree of spinal canal stenosis. Px7 at 12. Dr. Nagar testified that canal stenosis causes pain and weakness for Petitioner and affects her ability to ambulate. Px7 at 12, 16. Dr. Nagar agreed that the soft tissue edema seen on MRI of the lumbar spine was probably related to Petitioner’s trauma. Px7 at 12. Dr. Nagar agreed that it was her opinion that the trauma Petitioner suffered on December 3, 2016 caused the aggravation of the degenerative changes. Px7 at 13. Dr. Nagar testified that the aggravation of degenerative changes caused pain, sensory abnormalities such as numbness or tingling, motor weakness depending on the level, and may lead to experiencing abnormal levels of sensation of pain, especially when laying down. Px7 at 13.

Dr. Nagar testified that the lumbar spine MRI of March 2017 showed changes from the previous MRI that indicated worsening. Px7 at 23. Dr. Nagar explained that the spinal stenosis appeared to be worse along with the neural foramina that exited the right-sided and left-sided nerve roots that seemed to be compromised. Px7 at 24. Dr. Nagar testified that it was her opinion that the worsening of Petitioner’s condition on MRI was related to the December 3, 2016 accident. Px7 at 24.

Dr. Nagar testified that the cervical spine MRI of February 2018 showed degenerative changes, an osteophyte complex at C4 and C5, right-sided foraminal narrowing at C4-5, and similar changes seen at C5-6, and C6-7 causing mild central canal narrowing. Px7 at 26. These findings would produce pain for Petitioner. Px7 at 26. Dr. Nagar testified that the thoracic spine MRI of February 2018 showed an annular disc torn at T7 and T8 that was touching the interior aspect of the spinal cord, but was not causing cord compression or signal changes. Px7 at 26-27. These findings were pain producing for Petitioner. Px7 at 27. Dr. Nagar testified that the lumbar spine MRI of February 2018 showed arthritic changes similar to the previous ones and remained grossly unchanged. Px7 at 27. The findings were again significant at L4 and L5, which had previously shown mild to moderate spinal stenosis. Px7 at 27. These findings would produce pain for Petitioner and are related to the aggravation of Petitioner’s degenerative changes that occurred on December 3, 2016. Px7 at 27.

Dr. Nagar testified that she believes that Petitioner regressed during the period between November 26, 2018 and when she next saw Dr. Nagar on March 4, 2019. Px7 at 31-32.

Dr. Nagar testified that widespread degenerative disc disease and disc bulges cause intermittent pain and significant difficulties with walking, which Petitioner managed with physical therapy and intermittent steroid injections. Px7 at 39. Dr. Nagar testified that in her opinion, the December 3, 2016 work accident aggravated Petitioner’s degenerative changes in her lumbar spine, cervical spine, and thoracic spine. Px7 at 39. Dr. Nagar testified that the aggravation of Petitioner’s degenerative changes had not resolved. Px7

at 39. Dr. Nagar disagreed with Dr. Goldberg's opinion that Petitioner had sustained lumbar and cervical strains and testified that "...[b]ut certainly the cervical and lumbar strains I respectfully say are more radicular pain, meaning the nerve root pain, which is more than the strain as well as the cervical and lumbar spinal stenosis that we see. And I think that in itself prevents her from maximal return to work capacity based off of her balance, based off of her motor capabilities on exam that I find, and also with the slowed responses that I have gone on to see over time." Px7 at 41. Regarding the brain MRI, Dr. Nagar testified that it showed bifronto-temporal parietal volume loss, and that she believed it had something to do with Petitioner's capabilities in returning to a fully functional neurological cognitive conscious light work. Px7 at 41-42. Dr. Nagar testified that Petitioner would need pain management and intermittent physical therapy to help with motor skills and ambulation. Px7 at 42. Dr. Nagar testified that there was also a PTSD component that would warrant care from trained physicians. Px7 at 42. When asked if Petitioner's back injury was a temporary or permanent aggravation, Dr. Nagar responded that she believed "that this is probably going to be her baseline." Px7 at 44. Dr. Nagar testified that she believed that Petitioner was permanently and totally disabled from returning to work as a bus driver with Respondent. Px7 at 44. Dr. Nagar testified that she believed that Petitioner's treatment had been reasonable and necessary. Px7 at 45.

On cross examination, Dr. Nagar testified that she reviewed the MRI films, including those of the initial MRIs. Px7 at 47. Dr. Nagar testified that the annular tear, foraminal compression, and muscle edema seen on MRI seemed acute and of a more recent onset. Px7 at 48. Dr. Nagar testified that Petitioner could have had mild arthritis, like Dr. Goldberg alluded to in his report, and it was aggravated by the 2016 accident. Px7 at 48-49. Dr. Nagar testified that she had not ever done any Waddell testing. Px7 at 49. Dr. Nagar testified that she was hesitant to attribute Petitioner's instability issues to Petitioner's brain problems. Px7 at 53.

Testimony of Lauren Baumann

Lauren Baumann testified on behalf of Petitioner by way of evidence deposition taken on January 21, 2021. Px8. Ms. Baumann testified that she is the director of the FIRST work hardening and work conditioning program at ATI Physical Therapy. Px8 at 6, 10. She is a licensed athletic trainer. Px8 at 6. Ms. Baumann testified as to her credentials as an athletic trainer. Px8 at 6-10.

Ms. Baumann testified that she completed the functional capacity assessment on Petitioner and that she wrote the report that was offered as Baumann Exhibit 2. Px8 at 12. Ms. Baumann testified that the statement "client's full capability" means that the patient terminates their activity when they feel they have completed the activity to their fullest capabilities. Px8 at 14. Ms. Baumann testified that Petitioner's assessment results for the bilateral above-the-shoulder lift and desk/chair bilateral lift did not reach the medium physical demand level. Px8 at 17. Ms. Baumann testified that she did not terminate Petitioner's assessment, and that Petitioner terminated the assessment. Px8 at 19. Ms. Baumann agreed that she also tested one component of balance, and that she was concerned that Petitioner would fall. Px8 at 24-25. Ms. Baumann testified that during the sitting tolerance test, Petitioner was shifting positions frequently, grimacing, and shifting onto her right side, and that at that point, the left side of Petitioner's low back was causing her increased pain. Px8 at 26-27. Ms. Baumann was only able to complete set one of the grip dynamometer, and they were consistent. Px8 at 28. Petitioner's resistance dynamometer results were consistent. Px8 at 30. Ms. Baumann testified that the discharge summary of February 21, 201 corresponded with the FCA report of November 13, 2020 in that Petitioner was having muscle spasms throughout the upper and lower extremities and pain throughout the upper and lower extremities. Px8 at 31-32. Ms. Baumann testified that there was not a

lack of effort by Petitioner during the functional capacity assessment. Px8 at 33. Ms. Baumann testified that she did not observe any other health conditions that would have affected Petitioner's functional capacity assessment performance and that she did not observe any self-limiting behaviors by Petitioner. Px8 at 34. Ms. Baumann testified that Petitioner's FCA was indeterminate because they were not able to finish the test to get all of the necessary components to determine validity. Px8 at 36-37. Ms. Baumann testified that for the objective measures that she had, she would say that Petitioner was putting in her full effort. Px8 at 37.

On cross examination, Ms. Baumann testified that she did not request a job description from Respondent or Petitioner's attorney. Px8 at 38. Ms. Baumann testified that once Petitioner almost fell during the balance activity, she felt that Petitioner was a fall risk, and the assessment was terminated at that point. Px8 at 38-39. Ms. Baumann testified that the discharge summary of February 21, 2017 was not authored by her and that she did not know about it beforehand. Px8 at 39.

On redirect examination, Ms. Baumann testified that she does not make return-to-work decisions or any restriction decisions. Px8 at 40.

Testimony of Edward Steffan

Mr. Edward Steffan testified on behalf of Petitioner by way of evidence deposition taken on May 13, 2021. Px9. Mr. Steffan is a certified vocational rehabilitation counselor. Px9 at 6, 9. Mr. Steffan testified as to his education and credentials as a vocational rehabilitation counselor. Px9 at 6-10.

Mr. Steffan testified that he became involved in this claim in February 2021 at the request of Petitioner's attorney. Px9 at 11. Mr. Steffan testified that Petitioner's attorney provided him with records, and that he reviewed the records and interviewed Petitioner on two different calls to obtain the necessary information to produce his report of March 30, 2021. Px9 at 11. Mr. Steffan testified that he relied on Dr. Nagar's June 15, 2020 correspondence and Dr. Nagar's September 11, 2020 deposition. Px9 at 12. Mr. Steffan testified that while he reviewed the November 13, 2020 functional capacity assessment and the December 23, 2020 operative report, he did not predicate his opinions on those documents. Px9 at 12-13.

Mr. Steffan testified that given Dr. Nagar's opinion that Petitioner could not work, he made no recommendations for vocational placement assistance as Petitioner was not released with identified physical capacities to be able to return to work. Px9 at 16. Regarding Dr. Nagar's mention of Petitioner's reduction in cognitive abilities in her letter of June 15, 2020, Mr. Steffan testified that if physical capacities to work were provided, that Petitioner would be able to pursue entry level nonskilled work with a remuneration between \$11.00 and \$14.00 per hour. Px9 at 17.

On cross examination, Mr. Steffan testified that he did not have an opinion as to whether the injury Petitioner suffered was related to the work accident. Px9 at 19. Mr. Steffan also testified that he did not have an opinion as to whether Petitioner's ability or inability to look for a job, hold a job, return to work as bus driver, or work somewhere else entirely was related to any work accident. Px9 at 19.

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). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing and compared Petitioner's testimony with the totality of the evidence submitted. While the Arbitrator acknowledges some inconsistencies between Petitioner's testimony and the evidence submitted, the Arbitrator did not find any material contradictions that would deem the witness so unreliable as to defeat her claim.

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

Petitioner is claiming injuries to her cervical spine, thoracic spine, and lumbar spine. Petitioner is not claiming any brain-related injuries. Px7 at 25.

The Arbitrator finds that Petitioner's current conditions of ill-being as to her cervical spine, thoracic spine, and lumbar spine are causally related to the December 3, 2016 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Community First Medical Center, (2) the records of Concentra, (3) the records of Northwestern Medicine, including those of Dr. Piast and Dr. Ramanavarapu, (4) the records and testimony of Dr. Nagar, (5) Petitioner's credible testimony that she had not had any back problems in her 17 years as a bus driver, and (6) the fact that none of the records in evidence reflect any cervical spine, thoracic spine, or lumbar spine issues or treatment prior to December 3, 2016. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health and was able to work full duty and without restrictions immediately prior to the work accident.

The Arbitrator has considered the opinions of Respondent's Section 12 examiner, Dr. Goldberg and finds his opinions less persuasive than those of Dr. Nagar. The Arbitrator finds that the record overall supports Dr. Nagar's opinion that the December 3, 2016 accident caused the aggravation of degenerative changes in Petitioner's cervical spine, thoracic spine, and lumbar spine, which caused Petitioner intermittent pain and difficulties with walking, which Petitioner managed with physical therapy and intermittent steroid injections. The Arbitrator notes that Dr. Goldberg also opined that Petitioner's injury

was likely some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines.

The Arbitrator further finds that Petitioner was at maximum medical improvement (“MMI”) as of March 17, 2020, which is the last record offered of Petitioner’s treatment with Dr. Nagar. The Arbitrator acknowledges that Petitioner underwent a left laminar epidural steroid injection at L5-S1 on December 30, 2020, but notes that there is an unexplained nine-month gap in treatment between Petitioner’s March 17, 2020 visit with Dr. Nagar and the December 30, 2020 procedure. Accordingly, the Arbitrator finds that treatment provided to Petitioner after March 17, 2020 is unrelated to the December 3, 2016 injury, including the lumbar fusion procedure of September 28, 2021 and subsequent in-patient rehabilitation. The Arbitrator notes that the available medical records do not support a finding of causation as to the lumbar fusion or inpatient rehabilitation.

Issue G, as to what were Petitioner’s earnings, the Arbitrator finds as follows:

Petitioner claims that her earnings during the year preceding the injury were \$79,528.71 and that her average weekly wage was \$1,712.75. Arbitrator’s Exhibit (“Ax”) 1. Respondent disputes Petitioner’s claims, and Respondent claims that Petitioner’s earnings during the year preceding the injury were \$86,112.00 and that her average weekly wage was \$1,656.00. Ax1.

Petitioner testified that she earned \$33.00 or \$34.00 per hour and that she worked 12-hour or 14-hour shifts. That was the extent of Petitioner’s testimony regarding her earnings while working at Respondent. Respondent offered Rx5, Petitioner’s wage statement for the year preceding the injury. The Arbitrator has considered the evidence regarding Petitioner’s earnings and finds that Rx5 provides a more reliable representation of Petitioner’s earnings during the year preceding the injury. Accordingly, the Arbitrator finds that Petitioner’s average weekly wage, calculated pursuant to Section 10 of the Act, was \$1,656.00.

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:

Consistent with the Arbitrator’s prior findings, the Arbitrator finds that the medical services that were provided to Petitioner through March 17, 2020, the date of MMI, were reasonable and necessary, and that Respondent has not paid all appropriate charges. As the Arbitrator has found that Petitioner’s treatment was reasonable and necessary through March 17, 2020, the Arbitrator further finds that all bills, as provided in Px13 and supported by a treatment record within the records offered, are awarded and that Respondent is liable for payment of said bills pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in Rx4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Issue K, whether Petitioner is entitled to TTD benefits and maintenance benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits from December 3, 2016 through September 11, 2020 and that she is entitled to maintenance benefits from September 12, 2020 through November 30, 2022, the date of arbitration. Ax1 at No. 8. Respondent disputes Petitioner's claims and claims that Petitioner is entitled to TTD benefits from December 4, 2016 through May 8, 2017 and that maintenance benefits are not owed.

Based on the foregoing causation findings, the Arbitrator finds that Petitioner is entitled to TTD benefits from December 4, 2016 through March 17, 2020, the date of MMI, where the evidence demonstrates that Respondent did not accommodate Petitioner's restrictions or return Petitioner to work, following Petitioner's attempt to return to work at Respondent after Dr. Goldberg's IME.

Based on the foregoing causation findings and noting the "indeterminate" FCE and Petitioner's admission that she has not looked for a job since the December 3, 2016 accident, the Arbitrator finds it inappropriate to award maintenance benefits.

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

The Arbitrator acknowledges Petitioner's request for a wage differential award based on the opinions of Ms. Lauren Baumann and Mr. Edward Steffan. The Arbitrator notes that Ms. Baumann testified that Petitioner's FCE was "indeterminate," as she was not able to obtain all the necessary components to determine validity. Mr. Steffan testified that he made no recommendations for vocational placement assistance because Petitioner had not been released with identified physical capacities to be able to return to work. Mr. Steffan then testified that *if* physical capacities to work *were* provided, Petitioner would be able to pursue entry level nonskilled work earning between \$11.00 and \$14.00 per hour. (emphasis added). The Arbitrator finds Mr. Steffan's opinions speculative and unreliable, where they are based on unidentified physical capacities and in response to a question regarding Petitioner's unrelated reduced cognitive abilities. Based on the record as whole, the Arbitrator finds that a wage differential award is inappropriate.

Accordingly, the Arbitrator looks to Section 8.1(b) of the Act, which sets forth five enumerated criteria to be considered in determining permanent partial disability, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered includes: (i) the reported level of impairment pursuant to AMA; (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.

Regarding criterion (i), the Arbitrator notes that an AMA Impairment Rating was not offered, and therefore the Arbitrator assigns no weight to this factor.

Regarding criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 57 years of age and was employed by Respondent as a bus driver. The Arbitrator notes that Petitioner did not return to work at Respondent following the December 3, 2016 accident and has not looked for employment since the December 3, 2016 accident. The Arbitrator notes that while Petitioner testified that she continued to treat at the time of arbitration, the last treatment date reflected in the

records is Petitioner's March 17, 2020 visit with Dr. Nagar. As there is no evidence as to Petitioner's work status after March 17, 2020, the Arbitrator assigns less weight to this factor.

Regarding criterion (iv), the Arbitrator notes that the record is vague as to Petitioner's earning capacity, where the Arbitrator has found Mr. Steffan's opinions unreliable and speculative, Petitioner's FCE was "indeterminate," and Petitioner's work status after March 17, 2020 is unknown. The Arbitrator assigns less weight to this factor.

Regarding criterion (v), Petitioner sustained an aggravation of degenerative changes in her cervical spine, thoracic spine, and lumbar spine, which caused intermittent pain and difficulty with walking, which Petitioner managed with physical therapy and intermittent steroid injections. While Petitioner testified that she was still treating at the time of the hearing, the last treatment date reflected in the records is Petitioner's visit with Dr. Nagar on March 17, 2020.

At arbitration, Petitioner testified that she has difficulty walking, that she cannot focus, that she cannot do her normal duties, and that she cannot walk without assistance. The Arbitrator, however, notes that Petitioner's overall treatment history is vague, and that unrelated conditions, including the lumbar fusion and brain/cognitive issues, may be contributing to Petitioner's difficulty with walking and focus. The Arbitrator again notes that Petitioner makes no claim that the accident brought about brain/cognitive issues and that the available medical records do not support a finding of causation as to the lumbar fusion. The Arbitrator assigns more weight to this factor.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Issue M, whether penalties/attorney's fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner's claim for penalties and attorney's fees is denied. The record does not support an award of Section 19(l) penalties and the Arbitrator finds that Respondent's disputes in this case are not vexatious or in bad faith, such that Section 19(k) penalties and/or Section 16 attorney's fees are merited.



ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012672
Case Name	Theresa Roark v. Ford Motor Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0016
Number of Pages of Decision	23
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mallory Zimet, Jason Rubens
Respondent Attorney	Anuoluwapo Oyerinde

DATE FILED: 1/26/2026

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Theresa Roark,

Petitioner,

vs.

NO: 22 WC 012672

Ford Motor Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering causal connection, medical expenses, temporary total disability ("TTD") benefits, and the nature and extent of the disability, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission reverses the Arbitrator's conclusion in part, finding that with regard to Petitioner's bilateral shoulders, her current condition of ill-being is not causally related to the work accident.

In the interests of brevity, the Commission relies primarily upon the detailed fact summary within the Arbitration Decision, with the exception of the following. Petitioner was acting as a team lead for Respondent at their Chicago assembly plant on September 24, 2021. T.31. There is no dispute that on that date, Petitioner suffered an accident when she fell as her work bike became stuck on a push rack and tipped over. After the accident, Petitioner was seen and treated for a fractured left rib. She later complained of left and right shoulder pain. The Arbitrator found all the conditions of ill-being to be related to the work accident on September 24, 2021. While we agree that Petitioner sustained an injury to her left rib that was causally related to the work accident, we disagree that Petitioner was successful in proving her left and right shoulder conditions of ill-being were causally related to said accident.

The Commission finds issue with the Petitioner's overall reliability as a historian, as there were several instances wherein the Petitioner's testimony did not match with the documentary evidence. This credibility issue directly impacted the Petitioner's ability to prove her conditions were causally related to the work accident.

At hearing, Petitioner testified that the bike she was riding was "very heavy at around 1,000 pounds". T.19. However, this was contrary to the testimony of Respondent's witness, Mr. Perry, who testified the tricycle weighed approximately 20 pounds. T.70-71. Her testimony was also incompatible with the visual demonstration of the cycle in the photographic evidence of PX8.

Petitioner testified at hearing that her neck pain started, "Pretty much immediately". T.24.

However, the medical records did not demonstrate any neck pain complaints until November 3, 2021. PX3, p.13.

Petitioner testified that when she returned to work in December 2021 her left shoulder was bothering her and she was having “a kind of hard time lifting her arm”. T.26. However, Petitioner did not seek any medical attention for this until February 11, 2022. Further, Respondent’s witness testified after she returned to work on December 3, 2021, he witnessed her working and saw her riding her tricycle, lifting and collecting the “leaners” herself. T.75-77.

Petitioner testified that when she returned to work, she was working possibly only 28 to 30 hours a week, due to it being a slow time of year. However, the attendance report submitted by Respondent indicated something different. The report shows that for six out of the ten weeks she worked from December 3, 2021 through her return for treatment on February 11, 2022, she worked a more than forty-hour work week. RX8.

Petitioner initially testified that she had never had an injury or a broken bone, when trying to explain she did not understand she had injured her left shoulder. However, she later testified that she had broken her thoracic spine in a car accident in 1998. T.46, 49.

When asked if, as a team leader, she had a supervisor, she initially testified that they occasionally had supervisors in the department, but at the time they “pretty much ran the department themselves”. T.56. She later agreed that Kenneth Perry was her supervisor. T.57.

We find Petitioner’s tendency to exaggerate until confronted with alternate evidence is problematic in this case. Dr. Verma was the sole causal connection opinion for Petitioner’s left and right shoulder conditions. His treatment of Petitioner began over five months after the September 24, 2021 date of accident. He relied solely upon her description of the onset of symptoms and had no way to review the medical records and discuss her version of events against the background of contemporaneous medical records with her.

Expert evidence is to be received, treated and weighted precisely as other evidence. The weight of such expert testimony should be determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Peabody Coal Co. v. Ill. Indus. Comm’n*, 289 Ill. 449, 454 (1919). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert’s opinion. *Gross v. Ill. Workers’ Comp. Comm’n*, 2011 IL App (4th) 100615WC, citing *Torres v. Midwest Development Co.*, 383 Ill. App.3d 20, 28 (2008). “Expert opinions must be supported by facts and are only as valid as the facts underlying them.” *Id.*, citing *In re Joseph S.*, 339 Ill. App.3d 599, 607 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look behind the opinion to examine the underlying facts. A treating doctor’s findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information. *Rajvi v. United Airlines*, 12 IWCC 94, 2012 WL 440353 at 13, 31 (Ill. Indus. Comm’n) interpreting *Horath v. Industrial Commission*, 96 Ill. 2d 349 (Ill. 1983).

The Commission agrees with the Arbitrator’s assessment of Dr. Shadid’s opinions and her reasons for discounting said opinions. However, Dr. Verma’s opinion was likewise deficient. Dr. Verma did not begin to treat Petitioner until March of 2022, almost five months after the accident. PX2. He testified that he did not review any of Petitioner’s medical records from prior to her visit with him in March 2022, other than her February MRI. PX7, p.30. He testified on cross examination that he did not know that when Petitioner saw Dr. Norman on October 1, 2021, she

reported left-sided lower chest and upper abdominal pain, but denied other injuries due to the September 24, 2021 fall. He testified he had not reviewed records from Dr. Norman dated October 11, 2021 and November 3, 2021, wherein Petitioner again did not report any left shoulder medical symptoms emanating from the September 24, 2021 fall. He had not reviewed the November 3, 2021 treatment record, where Petitioner had reported neck pain radiating to the *right* side. PX7, p.31-32. He had not reviewed records that showed Petitioner had chronic cervical symptoms or that she had chronic degenerative development in the cervical spine prior to the work incident. P.32. Further, Dr. Verma testified that the onset of left shoulder pain was *sometime* after the September 24, 2021, but he agreed he did not know the specific date of onset. PX7, p.32. He further testified that it could not be determined if the left shoulder rotator cuff tear was caused or aggravated by the work accident. PX7, p.33. He agreed that even if she had not suffered a work injury, Petitioner was still at a high risk of sustaining a rotator cuff tear based upon her age. PX7, p.44. He also agreed that patients could have rotator cuff tears without any traumatic injury. *Id.*

Given Petitioner's lack of credibility and Dr. Verma's incomplete information, we find Dr. Verma's opinions as to causation lack an adequate basis. Thus, we do not find his opinions to be sufficient to prove Petitioner's left shoulder injury was causally related to the work accident of September 24, 2021.

The Commission further disagrees that Petitioner's right shoulder condition was causally related to the work accident of September 24, 2021. It is a natural progression that if the left shoulder injury is not causally related to the work injury of September 24, 2021, then the "overuse" injury of the right shoulder would likewise not be related. However, we find it is worth noting that Petitioner alleged that she developed symptoms in her right shoulder during her physical therapy sessions following her left shoulder surgery on April 26, 2022. However, at the time of Petitioner's initial intake at Athletico on May 6, 2022 and prior to any physical therapy sessions, Petitioner provided a history of right shoulder complaints. PX5, p.205. This may not be essential for the right shoulder causation analysis given our denial of the left shoulder causal connection, but it is necessary to demonstrate the problems with Petitioner's ability to provide an accurate history of her symptoms and the impact on the formation of Dr. Verma's causation opinions. Dr. Verma testified that as of May 6, 2022, Petitioner did not have any complaints of right shoulder symptoms and that her first report of a right shoulder symptom was on June 20, 2022. PX7, p.35. Unfortunately, this is in complete opposition to the physical therapy records from May 6, 2022. Again, as Dr. Verma relied upon Petitioner's non credible history in forming his opinions, his opinions are likewise not reliable.

There was no dispute from either Dr. Verma or Dr. Shadid that Petitioner's imaging of the bilateral shoulders demonstrated degenerative changes. It was Petitioner's burden to prove that the work injury was at least a factor in the cause or aggravation of her injury. Petitioner simply failed to do so in this case.

After considering the totality of the evidence, the Commission reverses the Arbitrator's conclusion that Petitioner met her burden of proving the current condition of ill-being of her bilateral shoulders was causally related to the September 24, 2021, work accident. The credible evidence shows that Petitioner sustained a fracture of her left seventh rib and reached maximum medical improvement for that injury as of November 29, 2021.

Based upon the Petitioner's failure to meet her burden with regard to causation of her bilateral shoulder conditions, the Commission partially vacates the award of temporary total disability. The Arbitrator awarded two periods of disability, September 25, 2021 through

December 2, 2021 *and* March 5, 2022 through June 7, 2023. After the September 24, 2021 accident, Petitioner had been treating for the left rib fracture and had been off work for that injury. On November 29, 2021, Dr. Norman released Petitioner to return to work full duty without restrictions beginning on December 3, 2021. T.795. The medical diagnosis for his treatment of Petitioner was “rib contusion”. *Id.* Petitioner returned to work on December 3, 2021, working throughout December 2021 and January 2022. T.24. The next time Petitioner was taken off of work it was for the left shoulder condition, which we have found was not causally related to the work accident at issue. Therefore, the Commission finds the Arbitrator’s award of temporary total disability benefits from September 25, 2021 through December 2, 2021 to be appropriate and vacates the Arbitrator’s award of temporary total disability benefits from March 5, 2022 through June 7, 2023. Respondent is entitled to a credit for temporary total disability benefits paid during this period as demonstrated in RX2.

The Commission also partially vacates the award of medical based upon our findings of a lack of causal connection to Petitioner’s bilateral shoulder conditions. Petitioner’s last office visit on November 24, 2021 detailed continuing pain to her left rib, but noted that Petitioner expected to be released by Dr. Norman by December 1, 2021. On November 29, 2021, Dr. Norman provided a return to work release for Petitioner’s rib contusion condition. T.795. Petitioner had no further medical treatment until February 11, 2022, when she returned to see Dr. Norman with left shoulder complaints. T.176-182. At the time of her February 11, 2022 visit, there was no further discussion or treatment of Petitioner’s rib injury. Based on the above, the Commission awards all reasonable and related medical provided through Petitioner’s release for her rib contusion on November 29, 2021. Respondent is to pay Petitioner directly for any outstanding medical services detailed in PX1, PX2 and PX3 through November 29, 2021, pursuant to Section 8(a) and 8.2 of the Act. The award of medical for PX4, PX5, PX6, and PX3 starting on February 11, 2022, is hereby vacated. Respondent is entitled to a credit for any amounts of the awarded bills previously paid by its workers’ compensation carrier, as shown in RX1. Respondent is also entitled to a credit for medical bills previously paid by its group insurance carrier as demonstrated in PX1, PX2 and PX3, pursuant to Section 8(j) of the Act.

Finally, given the Commission’s findings on causation, the Commission also vacates the Arbitrator’s award of permanent partial disability benefits with regard to her left and right arms. We find the Arbitrator’s award of 5% loss of use of the person for Petitioner’s left rib injury to be appropriate. We adopt the majority of the Arbitrator’s Section 8.1b(b) reasoning, striking only the paragraph related to Section 8.1b(b)(v) and replacing it with the following:

“Under Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Commission notes that Petitioner sustained a contusion and closed fracture of her left seventh rib. The medical records demonstrated that as of November 24, 2021, Petitioner still reported pain from her fractured rib. T.173. At trial, Petitioner testified that when she returned to work at Ford following her release, she was sore while working, but she knew she was close to retirement and just worked through the pain. On the date of hearing, Petitioner was retired, but her ribs were still sore. She testified that she took over the counter pain medications as needed. The Commission gives great weight to this factor.”

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 3, 2025, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner’s current condition of ill-being with regard to her bilateral shoulder conditions **is not** causally related to the September 24, 2021, work accident.

Petitioner left seventh rib condition **is** causally related to the September 24, 2021 work accident through the date of her release for the condition on November 29, 2021.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner temporary total disability benefits of \$1,000.00/week for 9 6/7 weeks, commencing September 25, 2021 through December 2, 2021, as provided in Section 8(b) of the Act. Respondent shall receive a credit for the temporary total disability benefits paid to Petitioner during this period, as demonstrated in RX2.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical charges incurred through November 29, 2021, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall receive credit for all amounts previously paid, if any, to or on behalf of Petitioner on account of said accidental injury. Respondent shall also receive credit for any medical payments previously made through its group medical plan to providers on behalf of the Petitioner pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner permanent partial disability benefits of \$900.00/week for 25 weeks, because the injuries sustained caused 5% loss of use of the person as a whole, as provided in Section 8(d)(2) of the Act.

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

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

January 26, 2026

O: 11/25/25

AHS/kjj

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012672
Case Name	Theresa Roark v. Ford Motor Company
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Mallory Zimet, Jason Rubens
Respondent Attorney	Anuoluwapo Oyerinde

DATE FILED: 7/3/2025

*/s/ Efi James, Arbitrator*_____
Signature**INTEREST RATE WEEK OF JULY 1 2025 4.11%**

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**

Theresa Roark

Employee/Petitioner

v.

Ford Motor Company

Employer/Respondent

Case # **22** WC **012672**

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 Poziopoulos James**, Arbitrator of the Commission, in the city of **Chicago**, on **April 8, 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 **9/24/21**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$78,000.00**; the average weekly wage was **\$1,500.00**.

On the date of accident, Petitioner was **60** years of age, *single* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$9,368.26** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$47,386.43** for other benefits, for a total credit of **\$56,754.69**.

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

ORDER

Petitioner's medical condition to her ribs, left shoulder, and right shoulder are causally related to the accident of September 24, 2021.

Petitioner's treatment was reasonable and necessary and finds that Respondent has not paid for said treatment. Respondent is 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: Ingalls Memorial Hospital (as documented in PX 1); Advocate Good Samaritan Hospital (as documented in PX 2); Amita Health (as documented in PX 3); Midwest Orthopaedics at Rush (as documented in PX 4); Athletico Physical Therapy (as documented in PX 5); and DuPage Emergency Physicians (as documented on PX 6).

Respondent shall be given a credit for any amounts of said bills previously paid upon proof of same.

Petitioner was temporarily totally disabled as a result of the accident from September 25, 2021 through December 2, 2021 and March 5, 2022 through June 7, 2023, a period of 75 4/7 weeks, with payment to be made at a rate of \$1,000.00 per week totaling \$75,571.43.

Respondent shall be given a credit of \$9,368.26 for temporary total disability and \$47,386.43 for other benefits under Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$900.00 per week for 150 weeks, because the injuries sustained caused 30% loss of use of the person as a whole (5 % loss of the person as a whole for the left rib, 12 ½% loss of person as a whole for the left shoulder and 12 ½% loss of person as a whole for the right shoulder), 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.

A handwritten signature in black ink, consisting of a stylized 'E' followed by a long horizontal line that curves upwards at the end.

Signature of Arbitrator

JULY 3 2025

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Theresa Roark,	)	
	)	
Petitioner,	)	
	)	
v.	)	IWCC No.: 22WC 012672
	)	
Ford Motor Company,	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on April 8, 2025, in Chicago, Illinois before Arbitrator Efi poziopoulos James on Petitioner's Request for Hearing. Issues in dispute include Causal Connection, Medical and Medical Bills, TTD and Nature and Extent. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Petitioner, Theresa Roark, testified that she was employed by Respondent, Ford Motor Company, at their Chicago assembly plant on September 24, 2021. (Tr. 13) She was employed as a team lead and was responsible for supervising 12 employees. Her employees would assemble Ford vehicles, and she was required to help assemble the vehicles when needed. (Tr. 15) To get around the plant, Petitioner used a three-wheel work bicycle with a toolbox on the back. (Tr. 15) Her job required lifting up to 50 pounds of material that would have to be put into a machine or a scrap container. (Tr. 15) Petitioner had worked at Ford for over 31 ½ years. (Tr. 13) At the time of hearing, Petitioner was retired.

Prior Medical Condition

Petitioner testified that prior to the September 24, 2021, accident, she had no prior injuries to her ribs, neck, left shoulder or arm, or right shoulder or arm. (Tr. 16) She testified that when she arrived at work on that date, she felt "great" and was not dealing with any injuries. (Tr. 16-17)

Accident

Petitioner testified that on September 24, 2021, she was riding her work bicycle on her way to give an employee a Band-Aid. (Tr. 17) The bicycle weighed close to 1000 lbs. (Tr. 18) She testified that she was coming around the corner when the wheel of her bicycle got caught on the wheel of a push rack that was in the middle of the floor. (Tr. 17) Petitioner testified that the bicycle fell over and as a result, she fell onto her left side injuring her left rib. (Tr. 18) Petitioner stated that she had the wind knocked out of her. (Tr. 19) She testified she reported the accident immediately and was sent to Ford's medical clinic. (Tr. 21-22)

Summary of Medical Treatment

On September 24, 2021, Petitioner presented to Ingalls Urgent Care. (PX 1) She underwent x-rays that revealed a questionable nondisplaced subtle fracture lateral margin of the lateral left seventh rib. (PX 1, pg. 3)

Petitioner presented to the emergency room at Good Samaritan Hospital in Downers Grove on September 26, 2021. (PX 2) She complained of left-sided lower chest and upper abdominal pain after she fell at work. She complained of significant pain with movement and breathing and presented for pain control. Petitioner denied other injuries from her fall. (PX 2, pg. 7) A physical examination revealed tenderness to the abdomen and chest and bruising to the chest. (PX 2, pg. 10) X-rays of the ribs revealed a contusion and closed fracture of the left seventh rib. (PX 2, pg. 14-15) Petitioner was prescribed hydrocodone for pain. (PX 2, pg. 8) Petitioner was diagnosed with a contusion of rib on left side and closed fracture of one rib on the left side. She was then discharged from the emergency department. (PX 2, pg. 16)

On October 1, 2021, Petitioner was seen by Laura Norman, DO at Amita Health. She complained of left-sided ribcage pain. Petitioner was diagnosed with left rib pain and was told to continue hydrocodone. (PX 3, pg. 7) Petitioner was seen again at Amita Health on October 11, 2021. (PX 3, pg. 8) Physical examination of the joints, bones, muscles, and extremities showed normal movement. There was tenderness along the left seventh to ninth rib. The diagnosis was contusion of rib. (PX 3, pg. 12)

Petitioner was next seen at Amita Health on November 3, 2021. (PX 3, pg. 13) She complained of radiating cervical spine pain originating at the C7 area. (PX 3, pg. 15) It was noted that this pain became worse after the work injury. (PX 3, pg. 16) There was soft tissue palpitation on the left. (PX 3, pg. 16) A cervical spine x-ray revealed mild multilevel degenerative disc disease throughout the cervical spine, without acute osseous abnormality. Physical therapy was ordered. (PX 3, pg. 16-17)

On November 24, 2021, Petitioner returned to Amita Health where she continued to complain of shortness of breath secondary to her rib pain. (PX 3, pg. 22) Upon physical examination, Petitioner demonstrated normal movement of all extremities. (PX 3, pg. 22) On November 29, 2021, Petitioner was noted to have a diagnosis of a rib contusion and released to return to regular duty without restrictions beginning December 3, 2021.

Petitioner testified she returned to full duty work without restrictions on December 3, 2021. (Tr. 24) Petitioner also testified that after she returned to work, her left shoulder was bothering her, and she was having "kind of" a hard time lifting her arm. (Tr. 24-26) Because her job mostly involved supervising, she did not immediately notice increased pain to her left side. However, as she was required to do more physical work as her employees called off, she noticed that she was having trouble lifting her left arm. This pain began at the time of her accident, but became more noticeable as the ribs were healing and her lifting increased. Petitioner testified she was not performing her tasks and, because she was working with all men, they were helping her with the scrap. (Tr. 27)

Petitioner reinitiated medical care at Amita Health on February 11, 2022. (PX 3, pg. 25) She stated that she thought her collarbone was broken and referenced pain for the last three weeks. (PX 3, pg. 25) She reported moderate aching in her left anterior shoulder for the past several months. (PX 3, pg. 28) Physical examination included the left shoulder joint and was noted to show pain and some limited motion with abduction and mild weakness. The description noted weakness in the left shoulder and that it was very difficult to raise her left arm above her head. (PX 3, pg. 28) The diagnosis included pain in the left shoulder joint and an MRI was recommended and Petitioner was to continue taking pain medication as needed. (PX 3, pg. 28)

On February 22, 2022, an MRI arthrogram was performed on Petitioner's left shoulder. The impression noted a full thickness delaminating rotator cuff tear involving the supraspinatus and infraspinatus tendons. There was also a suspected partial thickness articular surface subscapularis tendon tear. There was mild acromioclavicular and glenohumeral osteoarthritis. Retraction was noted of the rotator cuff tear of 1.5 cm. (PX 3, pg. 44)

On March 14, 2022, Petitioner presented to Dr. Verma at Midwest Orthopaedics at RUSH. (PX 4) She reported she was at work at Ford Motor Company and fell off a three-wheel bike when she turned a corner and had to avoid a lift rack. (PX 4, pg. 8) She reported she broke her rib and had left sided neck and shoulder pain. (PX 4, pg. 8) Petitioner reported having been off work for eight weeks before returning to work in December. However, she claimed she realized she was unable to do her job due to neck pain and continued shoulder pain. (PX 4, pg. 8) Dr. Verma reviewed the February 2022 MRI of the left shoulder and assessed Petitioner with left shoulder rotator cuff tear and biceps tendinitis. (PX 4, pg. 8) Dr. Verma recommended surgery consisting of left shoulder arthroscopic rotator cuff repair with subacromial decompression and possible biceps tenodesis and this was immediately scheduled for April 26th, 2022. (PX 4, pg. 9)

On April 26, 2022, Dr. Verma performed a left shoulder arthroscopy with intra-articular debridement, labrum, synovium, and bursa; left shoulder arthroscopic subacromial decompression with acromioplasty, left shoulder arthroscopic rotator cuff repair; and left shoulder arthroscopic biceps tenodesis. (PX 4, pg. 11) Petitioner's first post-op visit was on May 6, 2022. Her sutures were removed, and she was referred for physical therapy. (PX 4, pg. 19) Petitioner began physical therapy that same day at Athletico Physical Therapy. (PX 5) While the ordered treatment concerned her left shoulder, Petitioner indicated to her therapist that her right shoulder was now painful as well. (PX 5, pg. 210) Petitioner testified that the pain began in therapy when she was required to pull cords with her right arm. (Tr. 29)

On June 20, 2022, Petitioner returned to Dr. Verma. (PX 4, pg. 24) Petitioner reported that she exacerbated symptoms in her right shoulder and now reported pain with overhead activity and weakness. (PX 4, pg. 24) A right shoulder MRI was ordered to look at the rotator cuff as well as the bicep. As for the left shoulder, she was doing well, and she should continue with therapy. (PX 4, pg. 24)

The right shoulder MRI of June 23, 2022, revealed a full-thickness retracted supraspinatus and infraspinatus tendon tears with underlying tendinopathy; partial-thickness articular surface subscapularis tendon tear; intra-articular long biceps tendinopathy; moderate acromioclavicular joint osteoarthritis; mild to moderate glenohumeral joint osteoarthritis; moderate complex glenohumeral and bursal joint effusion. (PX 4, pg. 30)

Petitioner returned to Dr. Verma on June 27, 2022. (PX 4, pg. 35) Dr. Verma reviewed the MRI of the right shoulder and diagnosed Petitioner with complete rotator cuff tear or rupture of right shoulder, not specified as traumatic. (PX 4, pg. 35) Dr. Verma recommended surgery consisting of right shoulder scope, rotator cuff repair, biceps tendinosis, and subacromial decompression, which was performed on August 11, 2022. (PX 4, pgs. 35, 41-42) On August 19, 2022, Petitioner was referred to physical therapy. (PX 4, pg. 52)

Petitioner returned to Rush Orthopedics on October 5, 2022. It was noted that she had just discontinued the sling, which she wore for 6 weeks due to the massive nature of her tear. Following removal of the sling, she did have an acute exacerbation of pain, and Dr. Verma recommended a 5 to 6 day break from therapy. (PX 4, pg. 57)

On December 6, 2022, Petitioner was advised by Dr. Verma to remain off work because her job required heavy lifting, and they did not have light duty. Petitioner was also advised to continue physical therapy to work on strengthening and increase range of motion. (PX 4, pg. 62) Petitioner continued to treat with Dr. Verma.

On June 7, 2023, Petitioner attended her final appointment with Dr. Verma. (PX 4, pg. 81) It was reported that overall, Petitioner was doing well. (PX 4, pg. 85) Petitioner had returned to work and reported the work was tolerable. She did have discomfort with end range of motion, but overall felt her range of motion and strength had improved. (PX 4, pg. 85) Dr. Verma released her to full duty work and placed her at maximum medical improvement. (PX 4, pg. 85)

Evidence Deposition of Petitioner's treating physician, Dr. Nikhil Verma, on October 30, 2024

Dr. Nikhil Verma testified via evidence deposition on October 30, 2024. (PX 7) Dr. Verma treated Petitioner for her left and right shoulder injuries. In addition to his treatment, he authored a narrative report dated April 19, 2023. Dr. Verma testified that it is sometimes difficult for patients to determine the source of their pain, and it is not uncommon for complaints of neck pain to be related to pathology in the shoulder.

Dr. Verma testified that Petitioner's initial fall caused or aggravated a pre-existing left rotator cuff tear. (PX 7, pg. 14) He further testified that when her left shoulder immobilized in a sling, it led to overuse of the contralateral shoulder, causing an overuse injury to her right shoulder. (PX 7, pg. 15-16)

Dr. Verma agreed that a layperson can complain of neck pain, but after consulting with a doctor, it can be determined that the pain originated from the shoulder. (PX 7, pg. 17)

Dr. Verma opined that the need for treatment, including the bilateral rotator cuff repair surgeries, was reasonable, necessary, and causally related to her work injury. (PX 7, pg. 17)

On cross-examination, Dr. Verma testified that he first saw Petitioner four months after the September 24, 2021 work accident. (PX 7, pg. 20) Petitioner reported to him that she fell off a three-wheel bike in September 2021, broke her rib and had left-sided neck and shoulder pain. (PX 7, pg. 21) Physical examination of Petitioner's left shoulder on March 14, 2022, showed abnormal findings. (PX 7, pg. 21) He did not review any left shoulder imaging prior to February 2022. (PX 7, pg. 21) Dr. Verma noted that his March 14th and April 26, 2022, medical notes contained no causation opinion. (PX 7, pg. 22-23) He also noted that Petitioner first reported right shoulder symptoms on June 20, 2022. (PX 7, pg. 26) The findings in both shoulders were preexisting and chronic. (PX 7, pg. 27-28)

Dr. Verma agreed he could not state whether the tears in the bilateral shoulders were traumatically induced, or how long the tears had been present, based on his review of the MRIs. (PX 7, pg. 28) He noted the records contemporaneous to an injury are usually the most reliable. (PX 7, pg. 28-29) He also admitted he never reviewed any of the medical records from September 24, 2021, through March 13, 2022, except for the February 22, 2022, left shoulder MRI. (PX 7, pg. 29-30)

Dr. Verma testified that he had no knowledge Petitioner did not report any left shoulder symptoms until February 11, 2022. (PX 7, pg. 30-32) He noted that that left shoulder symptoms began sometime after the accident on September 24, 2021. (PX 7, pg. 32) He also opined that it could not be determined whether the September 24, 2021, work accident either was directly caused or aggravated by Petitioner's preexisting medical conditions. (PX 7, pg. 33) He agreed that "traumatic rotator cuff tears with a sudden onset would [commonly] present with immediate symptoms, for instance, intense shoulder pain and arm weakness" but noted that the amount of force to tear the tendon is markedly reduced in older patients and therefore the inflammatory association of the tear is also reduced. (PX 7, pg. 33) Dr. Verma opined that older patients can have a more subtle onset of symptoms. (PX 7, pg. 33) He also agreed that the risk of rotator cuff tear increased with age. (PX 7, pg. 34)

Dr. Verma testified he had no knowledge that Petitioner was seen by Dr. Norman on February 11, 2022, claiming she thought she broke her collarbone, and reporting pain for three weeks. (PX 7, pg. 34) He opined that rotator cuff tears can be caused by trauma, degenerative or aggravative factors. (PX 7, pg. 37) On redirect examination, Dr. Verma testified that individuals can have asymptomatic rotator cuff tears. (PX 7, pg. 41) that an incident that might be nothing to a 30-year-old might elicit significant pain responses to someone who is 60. (PX 7, pg. 42-43)

Section 12 Examination on October 10, 2023 with Dr. Hythem Shadid at Respondent's request and Evidence Deposition taken on November 19, 2024

On October 10, 2023, Petitioner was seen for an independent medical evaluation (IME) with Dr. Shadid at Respondent's request. (RX 4) Dr. Shadid reviewed Petitioner's treatment records from September 24, 2021, and physically examined Petitioner. Dr. Shadid diagnosed Petitioner with status-post bilateral rotator cuff repairs and biceps tenodesis procedures. (RX 4, pg. 12) He opined that Petitioner had no shoulder complaints on the day of the injury or 10 subsequent encounters with various health care providers over the next 140 days (between September 24, 2021, and February 11, 2022). (RX 4, pg. 12) He also observed that Petitioner was back to regular duty without restrictions for 58 days before complaining of left shoulder pain. (RX 4, pg. 12)

Dr. Shadid opined the fall on September 24, 2021, did not cause Petitioner's left shoulder rotator cuff tear, nor correlate with the onset of the left shoulder symptoms, using the lack of contemporaneous complaints in support of this opinion. (RX 4, pg. 12) He found no evidence to support an acute injury or even aggravation on this basis; the accident did not cause a 2.7 cm in AP dimension rotator cuff tear with 1.5 cm of tendon retraction. (RX 4, pg. 12-13) Dr. Shadid did not relate Petitioner's medical care for the bilateral shoulders to the September 24, 2021, work accident. (RX 4, pg. 12-13)

Dr. Shadid testified via evidence deposition on November 19, 2024. He testified as to a Section 12 independent medical evaluation he performed on October 10, 2023. (RX 5)

Dr. Shadid testified that he was a board-certified orthopedic surgeon working with Genesis Orthopedics and Sports Medicine. (PX 5, pg. 6) He specializes in all upper and lower extremities and conservative treatment for the cervical and lumbar spine. (PX 5, pg. 6) He has been performing independent medical examinations (IME) for thirty years. (PX 5, pg. 7) A minimal portion of his practice relates to IMEs. (PX 5, pg. 8) He saw Petitioner on October 10, 2023, for an IME. (PX 5, pg. 9) Petitioner reported she was riding a three-wheeled bicycle as a team leader for Ford Motor Company in their plant on September 24, 2021, when the rear wheel caught a rack and caused the bike to tip over. She fell into the handlebars, which struck her in the ribs. She was diagnosed with rib fracture. Petitioner also reported to him that she did not know she had injured her shoulders at the time. (PX 5, pg. 10-12) Dr. Shadid reviewed treatment records from Ford's medical clinic, Advocate Aurora Health, Amity Health, and various MRI reports. (PX 5, pg. 12-13) In all the records, Dr. Shadid testified he found no

report of bilateral shoulder pain through October 11, 2021. (PX 5, pg. 14) He testified Petitioner did not report any injury to her cervical spine or lumbar spine at the IME. (PX 5, pg. 15) He also pointed out that Petitioner's treatment through November 24, 2021, focused on the 7th rib. (PX 5, pg. 16)

Dr. Shadid also testified Petitioner next saw a treating physician on February 11, 2022 after the November 24, 2021 visit. (PX 5, pg. 16) Dr. Shadid pointed out that Dr. Norman now noted Petitioner had left shoulder pain with limited motion with abduction and mild weakness. (PX 5, pg. 18) Dr. Shadid highlighted there was no complaint or diagnosis regarding the left shoulder prior to February 11, 2022. (PX 5, pg. 18) Dr. Shadid pointed out that the history provided by Petitioner to him was inconsistent with the earlier treatment records, which showed no shoulder complaints. (PX 5, pg. 20) Dr. Shadid explained that the history of the injury is important to understand the context of the patient's complaints and assist with diagnosis. (PX 5, pg. 20)

Dr. Shadid testified that the MRI of the left shoulder showed a very old and large rotator cuff tear with the word delaminating. Delaminating meant the whole tendon was starting to fall apart, which took a long time to happen and did not happen in a couple of months. (PX 5, pg. 22) He testified that Petitioner's left shoulder tear started on the supraspinatus tendon and over a period of years, spread to infraspinatus and subscapularis. (PX 5, pg. 22) He noted Petitioner had a degenerative left shoulder and there were no findings in the imaging of the cervical spine that can be attributed to the September 24, 2021 work accident. (PX 5, 23-26)

Dr. Shadid testified he diagnosed Petitioner with status post bilateral rotator cuff repairs and biceps tenodesis procedures. (PX 5, pg. 29) He concluded Petitioner's left shoulder diagnosis and treatments were not related to the September 24, 2021 accident because there was a lack of any shoulder complaints contemporaneous to the date of the injury. (PX 5, pg. 29) If Petitioner had any acute component to the work-related injury that involved the shoulder, he opined that there would have been some immediate complaints or, certainly, within 24 hours". (PX, pg. 29-31) "She was back to work full duty for fifty-eight days before she complained of left shoulder pain", "MRI findings showed chronic findings and no evidence of acuity or aggravation of the old injury", and "there was no mechanism for a rotator cuff tear". (PX 5, pg. 29-31)

Further, Dr. Shadid testified that if there was an acute injury that caused a rotator cuff tear, there would immediately be significant pain. However, chronic tears develop over a long period of time and age is not a factor as to when symptoms manifest in a chronic process. (PX 5, pg. 22-23) He opined that the September 24, 2021, work accident did not aggravate Petitioner's left shoulder preexisting medical condition because there were no complaints at the time of the accident, there was no evidence of an aggravation on any of the MRI, there was no mechanism for an aggravation. (PX 5, pg. 32-33)

Dr. Shadid also testified regarding Petitioner's report of a collarbone injury on February 11, 2022. He stated that the collarbone AC joint was where the collarbone met the acromion of the shoulder blade and Petitioner had significant arthritis at the AC joint in her imaging. (PX 5, pg. 36) He opined that Petitioner's complaint of pain on February 11, 2022, could have been emanating from the AC joint. (PX 5, pg. 36) He opined that it was possible that the onset of left shoulder symptoms was due to a new incident Petitioner suffered prior to February 11, 2022. (PX 5, pg. 36)

The doctor stated that there was no medical evidence to support Petitioner's right shoulder symptoms due to overcompensation. (PX 5, pg. 38) Petitioner's bilateral shoulder surgeries were not related to the work injury (Id. 39). Petitioner has preexisting degenerative process in the bilateral shoulders. (PX 5, pg. 40)

When asked on cross examination whether a fall onto the shoulder can cause pain, Dr. Shadid testified that blunt trauma is unlikely to cause a rotator cuff injury but can cause pain. (PX 5, pg. 42-43) When asked whether repetitive lifting can cause a rotator cuff tear, Dr. Shadid stated it could, but it would have to be very heavy

lifting of seventy-five pounds or more. (PX 5, pg. 43) Dr. Shadid testified that while it was possible that a layperson could not differentiate whether pain was originating from the neck or shoulder, it would be extremely unusual if there was no report of shoulder pain over multiple visits. (PX 5, pg. 44) He opined that Petitioner did not ascribe any of her left shoulder symptoms to any other aspect of her job other than the September 24, 2021 work accident. (PX 5, pg. 45-48)

Testimony of Kenneth Perry

Kenneth Perry appeared as Respondent's witness. Mr. Perry testified in-chief that he was currently a lead process coach on C-crew with Ford, working in the body shop. (Tr. 64) He has been working with Ford for 15 years and became a lead process coach in July 2024. (Tr. 64) Prior to July 2024, he was a process coach. He supervises maintenance and the production side, which includes 26 employees. (Tr. 64) He also supervises team leaders. (Tr. 65) He testified nothing in the body shop weighed over 30 lbs. (Tr. 66)

Mr. Perry testified he worked with Petitioner for three years and she was a team leader on C-crew. He was not working with C-crew in September 2021 but worked with them from October 2021. (Tr. 69) He obtained facts regarding the September 2021 injury and the facts were that Petitioner was riding a three-wheel bicycle in the B aisle when she hit a rack of C-D pillars, falling off her bike and fracturing her rib. (Tr. 69) He testified he also uses the bicycle at work, and it weighs about 20 lbs. (Tr. 69) Mr. Perry testified that while different team leaders may carry different tools, no team leader needed a whole tool kit in the bicycle. (Tr. 72) However, if a team leader needed the entire toolkit, it would not add more than 5 to 10 lbs. to the bicycle. (Tr. 72)

Mr. Perry testified that when Petitioner returned to work on December 3, 2021, she was able to perform her duties, including riding the bicycle, at work. (Tr. 74) He also testified that Petitioner was able to perform all her duties independently, including carrying leaners that weighed between 7-10 lbs. (Tr. 77) Mr. Perry was transferred from the C-crew the first week of February in 2022. (Tr. 78)

Petitioner's Current Condition

Petitioner testified that when she returned to work at Ford following her release, she was sore while working, but she knew she was close to retirement and just worked through the pain. She had trouble lifting her arms above her head. (Tr. 31) Other co-workers would help her when she was unable to lift something on her own. (Tr. 31-32)

Petitioner is now retired, but her ribs and shoulders are still sore. (Tr. 33) She used to be an avid kayaker but now has difficulty using the oars. (Tr. 33) Lifting overhead is difficult too. (Tr. 33) Petitioner testified that she takes over the counter paid medications as needed. (Tr. 32-33)

CONCLUSIONS OF LAW

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

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

stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission*, 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, (1977).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her be a credible witness. Petitioner came across as a hard-working individual. The Arbitrator finds Petitioner's testimony as to her undisputed accident to be straight forward, truthful, and consistent regarding the accident and subsequent physical complaints remained consistent throughout the record. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to her description of the accident or her current condition of ill-being.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her 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).

Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Id.* A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981).

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work injury of September 24, 2021. The Arbitrator relies on the credible and un rebutted testimony of Petitioner, as well as the

medical records admitted into evidence, specifically the medical opinion of Dr. Verma. *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979). Petitioner testified that prior to the September 24, 2021, accident, she had no prior injuries to her ribs, neck, left shoulder or arm, or right shoulder or arm. She testified that when she arrived at work on that date, she felt “great” and was not dealing with any injuries. The Arbitrator also considers the opinions of Dr. Shadid and finds the opinions of Dr. Verma more credible as it relates to whether Petitioner’s current condition of ill-being is causally related to the injury in question.

Whether an accident occurred in this case is not at issue. Petitioner promptly reported the injury of September 24, 2021, and sought medical attention. Initially, she was diagnosed with a fracture of her left seventh rib. Respondent offered no contrary evidence to rebut causation for the injury to Petitioner’s rib. Therefore, the Arbitrator finds this injury to be causally related to Petitioner’s work accident on September 24, 2021.

Regarding the left shoulder injury, the Arbitrator also finds this injury to be causally related to Petitioner’s work accident on September 24, 2021. Petitioner was seen at Amita Health on November 3, 2021, where she complained of radiating cervical spine pain that became worse after the work injury. A cervical spine x-ray revealed mild multilevel degenerative disc disease throughout the cervical spine.

Petitioner testified after she returned to full duty work without restrictions on December 3, 2021, her left shoulder was bothering her and she had a hard time lifting her arm. Petitioner testified that this pain began at the time of her accident, but became more noticeable as the ribs were healing and her lifting increased. Petitioner testified that she did not have any pre-existing pain or issues to her left shoulder. There is no evidence in the record to contradict Petitioner’s testimony.

On February 22, 2022, an MRI arthrogram on Petitioner’s left shoulder revealed a full thickness delaminating rotator cuff tear involving the supraspinatus and infraspinatus tendons and a suspected partial thickness articular surface subscapularis tendon tear.

Dr. Shadid’s testimony that Petitioner must have had left shoulder pain prior to this is not supported by the evidence. He opined that there was no causal connection between Petitioner’s work accident and her left shoulder condition. However, the Arbitrator does not find this opinion persuasive. First, Dr. Shadid did not review Dr. Verma’s medical records nor the operative report from her surgery. The Arbitrator is not persuaded by opinions that are not based on a review of the medical evidence.

Dr. Shadid summarized the accident in his report in response to interrogatory #2 while addressing causation. Dr. Shadid stated that “there is no mechanism for a rotator cuff tear. She landed on her left chest wall hitting the handlebars which is not a plausible cause for a “2.7 cm in AP dimension” rotator cuff tear (“supraspinatus and infraspinatus tendons”) with “1.5 cm of tendon retraction”, or aggravation of a pre-existing rotator cuff tear.” In his testimony, he further stated, “She landed on her left rib into the steering wheel. That does not cause a shoulder injury, you know, in any way or form. So there’s no mechanism for any injury.” (RX 5, pg. 30) While Petitioner did strike her ribs on the handlebars, she also testified that she fell onto her left side. This mechanism of injury is consistent with Petitioner’s testimony, the medical evidence, and even Dr. Shadid’s summary of the mechanism earlier in his report. In his report under “history of present illness,” he described the mechanism of injury as “She swerved to her left but the tricycle wheel got caught on the rack and the bike tipped over causing her to hit her ribs on the tricycle handlebars, which she was holding with both hands, before landing on her left side.”

The totality of the evidence indicates that Petitioner both hit her ribs on the handlebars and subsequently fell off her bike onto her left side. While Dr. Shadid states that striking her ribs on the handlebars did not cause or

aggravate the left rotator cuff tear, he does not address whether falling onto her left shoulder could have caused such an injury. Petitioner's testimony and the medical evidence indicate that the rotator cuff injury happened when she fell onto her left side after striking the handlebars.

As such, the Arbitrator is more persuaded by the testimony of Petitioner's treating physician, Dr. Verma. Dr. Verma treated Petitioner for her left shoulder injury and found that her injury is related to the work accident on September 24, 2014. He stated that the mechanism of injury of falling onto one's shoulder is the type of incident that can cause or aggravate a pre-existing rotator cuff tear.

The Arbitrator is also not persuaded that the time between Petitioner's accident and her onset of left shoulder complaints is fatal to her claims. Petitioner testified, and the medical evidence confirms, that Petitioner was treating and in pain following her rib fracture. It was only upon returning to work and resuming her tasks, including lifting, that she began to feel pain around her neck and left shoulder. Following a course of diagnostic imaging, it was only then that the doctor's determined the cause of her pain was a rotator cuff tear. The Arbitrator finds that this is a reasonable explanation for the delay of a rotator cuff tear diagnosis.

Regarding the right shoulder, the Arbitrator also finds this to be work related. After her left shoulder arthroscopy with intra-articular debridement, labrum, synovium, and bursa; left shoulder arthroscopic subacromial decompression with acromioplasty, left shoulder arthroscopic rotator cuff repair; and left shoulder arthroscopic biceps tenodesis, she was referred for physical therapy. While in physical therapy Petitioner complained of pain in her right shoulder. Petitioner testified that the pain began when she was required to pull cords with her right arm.

Dr. Verma testified that Petitioner's initial fall caused or aggravated a pre-existing left rotator cuff tear. He further testified that when her left shoulder immobilized in a sling, it led to overuse of the contralateral shoulder, causing an overuse injury to her right shoulder. The Arbitrator notes that Dr. Verma agreed that a layperson can complain of neck pain, but after consulting with a doctor, it can be determined that the pain originated from the shoulder. He opined that the need for treatment, including the bilateral rotator cuff repair surgeries, was reasonable, necessary, and causally related to her work injury.

In contrast, Dr. Shadid argued that overuse is not a mechanism of injury to cause Petitioner's right rotator cuff tear. Dr. Shadid testified that, "the evidence indicates that when one shoulder has been injured, that patients' overall activity level decreases significantly. And, as such, they are less likely to have any connection between the contralateral shoulder and the existing one." The Arbitrator is further not persuaded by Dr. Shadid's statements that Petitioner's right shoulder activity would decrease when she has a left shoulder injury. Petitioner is right hand dominant, so it is not unusual to think that she would continue using her right shoulder during recovery for her left shoulder injury. She was also required to use her right shoulder in therapy to "pull a cord and things like that." There is absolutely no evidence that Petitioner ceased using her right arm following her left shoulder injury.

The Arbitrator finds that Petitioner therefore finds that due to the chain of events, along with Petitioner's testimony and Dr. Verma's opinions, Petitioner's right shoulder injury is work-related.

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:

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Ingalls Memorial Hospital (as documented in PX 1); Advocate Good Samaritan Hospital (as documented in PX 2); Amita Health (as documented in PX 3); Midwest Orthopaedics at Rush (as documented in PX 4); Athletico Physical Therapy (as documented in PX 5); and DuPage Emergency Physicians (as documented on PX 6).

Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider/governmental benefits program, including but not limited to any health insurer, Medicare/Medicaid, and shall provide payment information to Petitioner relative to any credit due. The parties stipulated that Respondent is entitled to a credit under Section 8(j) of the Act of \$0. (AX 1)

Issue K, whether Petitioner is entitled to temporary total disability benefits (TTD), the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Id.* When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. *Id.* The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id.*

Having found Petitioner's condition of ill-being is causally related to her work accident on September 24, 2021, any periods of temporary total disability incurred would be the responsibility of Respondent. Based on Petitioner's testimony and the medical records submitted into evidence from her treating doctor, Dr. Verma, the Arbitrator finds Respondent liable for 22 3/7 weeks of TTD, which represents temporary total disability from September 25, 2021, through December 2, 2021 and March 5, 2022 through June 7, 2023 at a weekly TTD rate of \$1,000.00. Total owed by Respondent would be \$75,571.43. Respondent shall be given a credit of \$9,368.26 for temporary total disability and \$47,386.43 for other benefits paid under Section 8(j) of the Act.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers'*

Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. “No single enumerated factor shall be the sole determinant of disability.” 820 ILCS 305/8.1b(b). “None of the factors set forth in section 8.1b is to be the sole determinant of the claimant’s disability.” Corn Belt Energy Corp. v. Illinois Workers’ Compensation Comm’n, 2016 IL App (3d) 150311WC, ¶ 49.

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers’ Compensation Comm’n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed by Respondent, Ford Motor Company, at their Chicago assembly plant on September 24, 2021. She was employed as a team lead and was responsible for supervising 12 employees. Her employees would assemble Ford vehicles, and she was required to help assemble the vehicles when needed. To get around the plant, Petitioner used a three-wheel work bicycle with a toolbox on the back. Her job required lifting up to 50 pounds of material that would have to be put into a machine or a scrap container. Petitioner had worked at Ford for over 31 ½ years. At the time of hearing, Petitioner was retired. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 60 years old at the time of the accident. Because Petitioner is older and has a shorter work life expectancy, she must endure her disability for a shorter period of time. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes no evidence was offered regarding future earnings capacity. At the time of hearing, Petitioner had retired from her job. The Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner sustained a contusion and closed fracture of the left seventh rib. Petitioner’s injury as it relates to her right rib is not in dispute. Petitioner was also diagnosed with left shoulder rotator cuff tear and biceps tendinitis. On April 26, 2022, Dr. Verma performed a left shoulder arthroscopy with intra-articular debridement, labrum, synovium, and bursa; left shoulder arthroscopic subacromial decompression with acromioplasty, left shoulder arthroscopic rotator cuff repair; and left shoulder arthroscopic biceps tenodesis. Petitioner was also diagnosed with a full-thickness retracted supraspinatus and infraspinatus tendon tears with underlying tendinopathy; partial-thickness articular surface subscapularis tendon tear; intra-articular long biceps tendinopathy; moderate acromioclavicular joint osteoarthritis; mild to moderate glenohumeral joint osteoarthritis; moderate complex glenohumeral and bursal joint effusion. On August 11, 2022, Petitioner underwent a right shoulder scope, rotator cuff repair, biceps tendinosis, and subacromial decompression.

At trial, Petitioner testified that when she returned to work at Ford following her release, she was sore while working, but she knew she was close to retirement and just worked through the pain. She had trouble lifting her arms above her head. Other co-workers would help her when she was unable to lift something on her own.

On the date of hearing, Petitioner was retired, but her ribs and both shoulders were still sore. She testified that she used to be an avid kayaker but now had difficulty using the oars. She also testified that lifting

overhead continued to be difficult. Petitioner testified that she takes over the counter paid medications as needed. The Arbitrator gives great weight to these factors.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% person as a whole for the fractured left rib, 12 1/2% person as a whole for the left shoulder and 12 1/2% person as a whole for the right shoulder pursuant to Section 8(d)2 of the Act which corresponds to 150 weeks of permanent partial disability benefits at a weekly rate of \$900.00.

It is so ordered.

A handwritten signature in black ink, appearing to read 'Efi Poziopoulos James', written over a horizontal line.

Arbitrator Efi Poziopoulos James

JULY 3 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033006
Case Name	Luis Mejia v. Oswego Truck Center & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0017
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Scott Moran
Respondent Attorney	Drew Dierkes

DATE FILED: 1/26/2026

/s/ Amylee Simonovich, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Luis Mejia,

Petitioner,

vs.

NO: 21 WC 033006

Oswego Truck Center & IWBf,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent, Illinois State Treasurer as *ex-officio* Custodian of the Injured Workers' Benefit Fund, herein and notice given to all parties, the Commission, after considering the issues of temporary total disability ("TTD"), and permanent partial disability ("PPD"), 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.

Background

After the undisputed incident at work on November 11, 2021, Petitioner essentially sought treatment with two treatment providers, nurse practitioner, Rebecca Wilson and Ms. Christie Fry, LCSW, QMHP, MSW. In the interests of brevity, the Commission relies primarily upon the detailed medical summary within the Arbitration Decision, with the addition of the following. The Commission notes that Petitioner's last date of treatment with Ms. Fry was on June 28, 2022. PX7, 56-57. On July 2, 2022, the Agency Discharge Summary detailed the therapy provided by Ms. Fry started on November 30, 2021 and ended on June 28, 2022. The Discharge/Aftercare plan noted a successful completion of treatment and no further care recommendations were made. PX7, p.57.

At the time of hearing, Petitioner testified that his therapist had changed to a different company and her rate was triple what he was paying, so he could not afford to see her. T.20. He also testified that when he was undergoing therapy with Ms. Fry, he was paying for the sessions, along with his wife's insurance. T.18-19. Petitioner was not receiving any indemnity benefits from his employer during his time off. T.19. Petitioner testified Respondent did not offer any benefits to him, but they offered him a check for a thousand dollars, which initially bounced, but eventually Petitioner was able to cash the check. T.20.

Petitioner testified it was too hard for him to go back to work. Every time he tried, he just couldn't do it. His numerous attempts were detailed in the Arbitration Decision. Petitioner

eventually found a new job, cooking for a restaurant in Naperville. T.21. He worked there from around September 2022 until August of 2023. Petitioner testified he stopped working there because the drive from where he lived in Aurora to Naperville with the traffic and trucks was too overwhelming for him. Petitioner tried to find work at a second restaurant in August of 2023, which was better because it was 10 minutes from his home and there were not too many busy streets. T.23. He testified that eventually the panic attacks started happening again. It started affecting his performance again, so he stopped working there too. T.24.

After his release from care on June 28, 2022, Petitioner did not have any further psychiatric or alternative medical care. T.27.

Analysis

The Commission agrees with the Arbitrator's award of temporary total disability benefits but disagrees with the period awarded. A claimant may be entitled TTD from the time he is incapacitated by a work-related injury until the employee is as far recovered as the permanent character of the injury allows. *Archer Daniels Midland Co. v. Ill. Indus. Comm'n*, 138 Ill.2d 107, 118. (1990) The medical evidence submitted at hearing demonstrates the last time Petitioner underwent medical treatment was on June 28, 2022. PX7, 56-57. On July 2, 2022, the Agency Discharge Summary noted that service to Petitioner ended on June 28, 2022. The Discharge/Aftercare plan noted a successful completion of treatment and no further recommendations were made for treatment or restrictions. PX7, p.57.

Petitioner testified that the reason he did not seek further psychological care was that his counselor left the practice, and he could not afford to continue his care with her. T.20. However, there is nothing in the records to demonstrate Petitioner was advised to continue with therapy after the departure of his therapist. The July 2, 2022 termination note, indicated that Petitioner had completed his treatment and there were no further recommendations. There was no other medical evidence submitted to suggest Petitioner had not reached maximum medical improvement.

Petitioner was represented by counsel and had coverage through his wife's insurance. However, no medical evidence was proffered to support the theory he had not reached maximum medical improvement as of the date of his release by Ms. Fry on July 2, 2022.

Further, the evidence suggests, and the parties agree that Respondent paid \$1,000.00 in benefits to Petitioner and that they should receive a credit for that payment. Pet. Brief, p.8. The Commission thereby modifies the Arbitrator's decision to reflect a credit of \$1,000.00 for TTD paid by Respondent to Petitioner.

Finally, we agree with the Arbitrator's finding of permanent partial disability, however, disagree with the extent of the disability.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

With regard to **§8.1(b)(i)**, there was no impairment rating introduced by either party. The Commission places no weight on this factor.

With regard to **§8.1b(b)(ii)**, the occupation of the injured employee, Petitioner was a mechanic. Petitioner tendered Respondent his work restrictions and they were not accommodated. Petitioner did not return to Respondent for employment. Petitioner testified that he tried on multiple occasions to return to work but found himself to be psychologically unable to work as a mechanic. There was no evidence introduced to demonstrate medical restrictions on his employment after his release on June 28, 2022. The Commission places significant weight on this factor.

With regard to **§8.1b(iii)**, the age of the employee at the time of the injury, Petitioner was 43 years old at the time of the accident. The Commission places some weight on this factor.

With regard to **§8.1b(b)(iv)**, the employee's future earning capacity, no evidence regarding diminished earning capacity was entered into evidence. On June 28, 2022, Petitioner's treatment provider terminated his care, noting he had successfully completed treatment, with no further recommendations. There was no evidence that upon his release from care Petitioner had restrictions which would limit his employment. Petitioner testified he was unable to perform work as a mechanic and as a result sought employment outside the field of mechanics. There was no evidence introduced to demonstrate any reduced income as a result of this change. The Commission places significant weight on this factor.

With regard to **§8.1b(b)(v)**, evidence of disability corroborated by the treating medical records, Petitioner was last treated for this injury on June 28, 2022. He was released from care with no further recommendations and Ms. Fry noted a successful completion of treatment. There were no further medical opinions to support Petitioner's ongoing disability complaints.

However, Petitioner did provide significant testimony regarding his repeated efforts to return to work and the effects of his continued symptomology on his home and work life. The Commission finds his testimony regarding his symptoms and return to work efforts to be credible. This is based upon the consistency of his testimony and the similarity of his descriptions of the struggles he had during his return-to-work attempts to the struggles he described during his psychiatric evaluations at Family Counseling Center and to Ms. Fry during his therapy sessions with her. The Commission gives this factor significant weight.

Based upon a consideration of all the above factors, the Commission finds an award of 12.5% loss of use of the person as a whole to be appropriate.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 18, 2025, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of \$766.71/week for 32 5/7 weeks, commencing November 12, 2021 through June 28, 2022, as provided in Section 8(b) of the Act. Respondent shall receive credit for the \$1,000.00 paid to Petitioner during his time of temporary total disability.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 5 through 9, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner permanent partial disability benefits of \$690.00/week for 62.5 weeks, as the injuries sustained caused 12.5% loss of use of the person as a whole, as provided in Section 8(d)(2) of the Act.

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

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Bond for 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.

January 26, 2026

O: 11/25/25
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	21WC033006
Case Name	Luis Mejia v. Oswego Truck Center & IWBF
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Scott Moran
Respondent Attorney	Drew Dierkes

DATE FILED: 4/18/2025

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



April 18, 2025

/s/ Paul Seal, Arbitrator

Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF APRIL 15 2025 4.06%

STATE OF ILLINOIS)
)SS.
 COUNTY OF KANE)

☒	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

LOUIS MEJIA

Employee/Petitioner

Case # **21** WC **033006**

v.

Consolidated cases: _____

1) Oswego Truck Enter, et al,
2) State Treasurer and ex officio-custodian
of the Injured Workers Benefit Fund.

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Geneva**, on **February 27, 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 **11/11/2021**, 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 \$59,800.00; the average weekly wage was **\$1150.00**.

On the date of accident, Petitioner was **43** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$0.00** 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.

The was claim was filed on December 02, 2021, and for more than four years when it appeared on the status call on December 19, 2024, and received a trial date of February 27, 2025. Respondent Oswego Truck Center, *et al.*, failed to appear by its officers or a representative at either the status call on January 17, 2025, nor the hearing on February 27, 2025. The Petitioner presented evidence on February 27, 2025, that three (3) separate notices were sent to Petitioner on December 20, 2024, January 21, 2025 and January 21, 2025 of this this hearing date, time, and location to Respondent Oswego Truck Center, *et al* to their previous address, their last known address, and its Registered Agent/Officer via regular and certified U.S. mail and moved to proceed *ex parte* against them.

The Petitioner received a certification of no workers' compensation insurance coverage for November 11, 2021, for Respondent Oswego Truck Center, *et al.* The Petitioner amended his Application to seek benefits from the Injured Workers' Benefit Fund pursuant to Section 4(d) of the Act.

The Respondent Injured Workers' Benefit Fund through the State Treasurer, the *ex-officio* custodian of the Injured Workers' Benefit Fund, was represented by the Illinois Attorney General's office.

Respondent Oswego Truck Center, *et al* did not appear or request a continuance and a hearing was conducted *ex parte* with regard to Respondent Bevel Granite.

ORDER

The Respondent shall pay Petitioner temporary total disability benefits of \$766.71/week for 41-6/7 weeks from November 11, 2021 through September 1, 2022, as well as another 78-1/7 weeks from August 31, 2023 through February 28, 2025, which are the periods of temporary total disability for which compensation is payable, with Respondent receiving a credit in the amount of \$0 for benefits paid, resulting in a net benefit owed to Petitioner in the amount of \$92,005.20.

Respondent shall pay Petitioner permanent partial disability benefits of \$690.00/week for 225 weeks, because the injuries sustained caused 45% loss of the man as a whole, as provided in Section 8(d)2 of the act.

The medical care rendered to Petitioner at Family Counseling Service and Rush Convenient Care, as reflected in Petitioner's Exhibits #5 - #9 was reasonable and necessary and the Respondent shall pay the medical bills in accordance with the Act and the medical fee schedule.

Injured Workers' Benefit Fund

This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act, in the event of the failure of Respondent/Employer, Oswego Truck Center, *et al*, to pay the benefits due and owing the Petitioner. The Respondent/Employer, Oswego Truck Center, *et al*, shall reimburse the Injured Workers' Benefit Fund for any of their compensation obligations paid to the Petitioner from the Injured Workers' Benefit Fund.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

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



APRIL 18 2025

Signature of Arbitrator

FINDINGS OF FACT

Petitioner testified that on November 11, 2021, he was working for Respondent Oswego Truck Center, *et al*, located in Oswego, Illinois. Tr. 11. Petitioner was 43 years old and was married with no dependents at that time. Arb. Ex. 1. Petitioner testified that he started working for Oswego Truck Center, *et al* in September 2020, about a year prior to November 11, 2021. Tr. 12. He testified that he worked as a mechanic, performing oil changes changing tires, radiators and anything that had to do with repairing the trucks. Tr. 13. In addition, Petitioner also performed changing the panels on the trucks and trucks in and out of the shop. *Id*.

Petitioner testified that he was paid every two weeks and that taxes were taken from his check. Tr. 12. Petitioner also testified his salary was directed deposited into this bank account. *Id*. Portioner testified his salary was \$59,800.00 a year on the date he was injured. *Id*. Arb. Ex. 1.

Petitioner testified that on November 11, 2021, he was working for Oswego Truck Center, *et al*. Tr. 13. Petitioner testified his supervisor was Jose. *Id*. Petitioner testified he was working on a truck replacing some lights and a distribution valve and was waiting for some parts. Tr. 14. Petitioner testified that Jose asked him to help another mechanic work on another truck changing a tire. Tr. 14.

Petitioner testified that while waiting for another mechanic to bring another jack to lift the truck on the other side he started to position his jack stand underneath the truck. Tr. 15. While performing this act, Petitioner testified he started to feel like the truck was moving, then pressing against his chest. *Id*. Next Petitioner started to try to figure out why, then suddenly he felt more pressure on his chest. *Id*. Petitioner then noticed the truck leaving towards him and he pushed himself out from underneath the truck. *Id*. Petitioner's head barely cleared the tires as the truck fell off the jack and as a result the hat he was wearing was found underneath the tires. *Id*.

After removing the jack the truck began to move backwards. Tr. 15-16. Petitioner testified that is when he realized there were two truck drivers inside the truck. Tr. 16. Petitioner testified there were signs all over the shop signifying drivers were not supposed to be in the trucks. *Id*. Petitioner was not sure how long they were in the truck. *Id*.

Petitioner testified that he went to his supervisor, Jose, and told him the truck almost crushed him. *Id*. Petitioner testified that Jose ran out of the office and found two drivers inside the truck and saw they were the ones who caused the truck to fall off the jack. *Id*.

Petitioner testified while he finished the rest of the day at work it was hard to keep functioning, but he just tried not to think about it too much. *Id*. The next day, returning to work, Petitioner was assigned to work on another truck, but as soon as he started he began to feel nervous. Tr. 16-17. Petitioner described that as his hands started shaking and he was sweating, and he felt like he could not breath. Tr. 17.

Petitioner testified after he went under the truck everything became blurry, he couldn't see straight, he could not breath and he started crying. *Id*. He went on to testify that it felt like there was something too heavy on his chest and he could not stop shaking. *Id*.

Petitioner went and talked to Jose his supervisor who suggested he sit down for a little bit in an effort to calm down. *Id.* However, when Petitioner tried to go back to work it all started over again. *Id.* Petitioner testified every time he went around a truck he just started shaking and kept thinking one more second and my head would have been under the tire. *Id.* Petitioner stated he just kept thinking over and over about it. *Id.* Petitioner testified that his supervisor told him to go home. *Id.*

Petitioner testified that he went to see his physician for help. Tr. 17-18. On November 15, 2021, Petitioner was seen by Rebecca A Wilson, NP ("Wilson"). PX 8 p. 28. Wilson states, "43 yr old M presents with his wife for follow up evaluation after recent CC visit. Pt was at work on 11/11/2021 when he almost got crushed by a semi-truck that he was working under." *Id.* Wilson goes on to document, "He felt his "life flash before his eyes" and thought about all the people he loves." *Id.* Finally, Wilson states, "He has been unable to relax since this happened. He has been on edge, nervous, anxious, he can't talk about the incident without crying. He is also having terrible nightmares." *Id.*

The medical record also indicates Petitioner had pre-existing diagnosis of PTSD from previous abuse. *Id.* Wilson documented Petitioner was self-medicating with alcohol this past weekend to get to sleep because he could not sleep. *Id.* Petitioner also started taking Xanax. *Id.* Wilson also noted Petitioner attempted to go back to work on November 12, 2021, but had to leave half way through the day due to the anxiety. *Id.*

Wilson diagnosed Petitioner with Panic disorder with agoraphobia and PTSD (post-traumatic stress disorder). PX 8 p. 30. Wilson removed Petitioner from work for two (2) weeks. PX8 p. 31. Wilson also referred him to a specialist for psychological care. PX8 p. 33.

Petitioner next treated by Cristie Fry, LCSW, QMHP, MSW ("Fry") on November 30, 2021. PX7 p. 4. Fry noted, "Client presents with symptoms of PTSD after near-death experience, almost being crushed while working underneath a truck when the jack slipped out of place after the drivers got into the truck while Client was underneath. Client is reporting nightmares, flashbacks, "can't leave my house", constantly thinking about the incident, "can't work". Client was visibly shaking (leg and hands) during the session." *Id.* Fry diagnosed Petitioner with PTSD. *Id.* Fry noted Petitioner was started on 25mg of Zoloft, then increased it up to 50mg per day as well as .25mg of Xanax for panic attacks. PX7 p. 5.

Petitioner next seen Fry on December 14, 2021. PX7. p. 9. Fry documented Petitioner complained in this session of panic attacks as evidenced by feeling dizzy, increased heart rate, shaking, heavy chest, and difficulty concentrating. *Id.* In addition Petitioner reported that he is afraid to go outside or drive as well as problems with mood swings and mild irritability. *Id.* Finally Petitioner complained in this session of significant sleep disturbances with difficulty falling asleep and staying asleep; reports nightmares every night. *Id.* Fry also documented in the December 14, 2021, Petitioner had a Psychiatric History in which about fifteen (15) years prior he was an inpatient at Elgin State Mental Health Center.

Petitioner's next session with Fry was December 21, 2021. PX7 p. 13. Fry found Petitioner was cooperative throughout and appeared open and honest and when he discussed the incident he

became tearful. *Id.* Fry observed the Petitioner physically shake during the entire session and they discussed grounding and breathing techniques to help calm anxiety. *Id.* Petitioner also reported that he has started crocheting and this helps to calm him down. *Id.* Petitioner also reported ongoing nightmares of the incident and being crushed by a semi and he still does not like to go outside of his home, or be around loud noises or many people. *Id.*

Petitioner's next session with Fry was December 28, 2021. PX 7 p. 14. Petitioner stated to Fry his anxiety has been "bad and the nightmares increased because I'm supposed to go back to work tomorrow". *Id.* Petitioner also reported that his wife and his dog have been waking him up during the night because he is having nightmares. *Id.* As a result Petitioner he "finally decided to tell my wife's family because they saw that I was not ok. I told them what happened and I was crying". *Id.* Fry wrote a letter for Petitioner for more time off work. PX6.

Petitioner was also treated by Fry on January 4, 2022, January 6, 2022. PX7 pgs. 15-16. Fry noted on the 4th Petitioner was tearful throughout session and on the 4th and 6th he was visibly shaking his legs and hands. *Id.* However, at the January 11, 2022, session Fry noted this was the first time Petitioner was not shaking. PX7 p. 17.

During the January 18, 2022, session Fry noted Petitioner's legs were shaking during entire session as he discussed the process with his employer and workman's compensation. PX7 p. 18. Fry noted Petitioner was concerned that his employer did not show up to the pre-trial and does not know what the future holds, which causes him anxiety. *Id.*

At the January 25, 2022, Fry talked with Petitioner how his legs were shaking during as well as Petitioner's desire to return to work. PX7 p. 20. However, at the February 1, 2022, appointment Fry noted Petitioner was still continues to report intrusive distressing memories of the event, recurrent nightmares, flashbacks, avoidance of triggers, persistent negative emotional state, anhedonia, feelings of detachment, irritable behavior self-destructive behavior, hypervigilance, exaggerated startle response, decreased concentration and sleep disturbances. PX7 p. 22.

During the February 8, 2022, session Petitioner talked about medication changes. PX7 p. 27. However, at the February 15, 2022, Petitioner discussed going back to work and stated, "I don't know if I want to go back there. They haven't reached out to check on me and they want to delay the court case. I have a lot of things I can do, and I need to work somewhere I know they care about me". PX7 p. 28.

While the February 22, 2022, discussed his general state of well being, the March 1, 2022, session was a bit more involved. PX7 pgs. 29-30. Fry noted Petitioner was more emotional because Petitioner talked about receiving a bad check from Respondent and stated, "I was started to feel a little better but then that set me back." PX7 p. 30.

Petitioner attended multiple sessions with Fry on March 8, 2022, March 15, 2022, March 29, 2022, April 5, 2022, April 12, 2022 and discussed his psychological condition. PX7 pgs. 31-46. But, at the April 19, 2022, Petitioner seen some minor improvement in that he has not had nightmares for four days. PX7 p. 47. In addition Petitioner reported he started watching videos of

mechanics working on trucks, so he can get more comfortable with the idea of returning to work. *Id.*

Petitioner attended sessions with Fry on April 26, 2022, May 3, 2022, May 10, 2022, May 24, 2022, May 31, 2022, June 7, 2022 and June 14, 2022. PX7 pgs. 48-54. Petitioner discussed the general state of his psychological health. During the June 14, 2022, session Petitioner stated to Fry that he was feeling better and thinks he was ready to start working a few hours. PX7 p. 54. Petitioner states he was in contact with his attorney and is requesting a letter from Fry to allow restricted duty. *Id.* Fry agreed and wrote a letter allowing 6 hours per day, no more than 5 days per week. *Id.*

Petitioner attended his final two (2) sessions with Fry on June 21, 2022 and June 28, 2022. PX7 p. 55-57. Fry advised she was leaving the practice on June 28, 2022. *Id.* That as such she would be terminating her psychological care for him. *Id.*

Petitioner testified he began working for another employer in September 2022 until August 2023. Tr. 21. Petitioner testified he could not continue to work there because of the length of the commute and as a result of all the traffic and trucks it became too overwhelming for him. Tr. 21-22. Petitioner stated as time went on he would suffer panic attacks. Tr. 22. He continued that at times his panic attacks got to a point where he would not even remember how to cut an onion. *Id.* Petitioner described his panic attacks as him hyperventilating, getting very anxious, start sweating, and he would start crying. *Id.* When he would start crying he just couldn't stop. Petitioner just wanted to go home and just crawl into a ball in bed. *Id.*

In addition, Petitioner's flashbacks and nightmares began to reappear. Tr. 22-23. He testified prior to the accident he did not experience these. Tr. 23.

Regardless, Petitioner continued to try to return to the workforce and in August 2023 began working for another employer. Tr. 23. This time he was closer to home, only about 10 minutes away. *Id.* While this job location was closer to Petitioner's home, he still complained of problems concentrating as well as driving near trucks. *Id.* As his condition continued to deteriorate he again was unable to maintain employment. *Id.*

CONCLUSIONS OF LAW

A) Was the Respondent operating under and subject to the Illinois Workers' Compensation Act?, the Arbitrator finds as follows:

The Arbitrator finds that Oswego Truck Center, et al., was a business that utilizes sharp edged cutting tools and machinery, loading and unloading of heavy materials, demolish or reconstruct machinery. Thus, based upon the evidence presented, this falls under the automatic coverage of Section 3 of the Act.

B) And G) Was there an employee-employer relationship?, and What were the Petitioner's earnings?, the Arbitrator finds as follows:

The Petitioner worked for Oswego Truck Center, et al for about one year prior to the injury. The Petitioner testified to his wages earned, the amount as well as the method of payment. Thus,

the Arbitrator finds that an employee/employer relationship existed at the time of the accident on November 11, 2021, and that the Petitioner earned was \$59,800.00 a year in the 52 weeks prior to his work injury, resulting in an average weekly wage of \$1150.00.

C) and D) Did an accident occur that arose out of and in the course of the Petitioner's employment by Respondent? and What was the date of the accident?, the Arbitrator finds as follows:

On November 11, 2021, the Petitioner was assigned by his supervisor to help another mechanic replace tires on a truck and while doing so, someone entered the truck causing it to fall off the jack and almost crush Petitioner, thereby causing a psychological trauma. The Petitioner's testimony is confirmed by the medical records of how and when the accident occurred. Thus, based upon the testimony and evidence presented, the Arbitrator finds that the injury arose out of and in the course of his employment on November 11, 2021.

E) Was timely notice of the accident given to the Respondent?, the Arbitrator finds as follows:

Petitioner testified that immediately after his injury, he verbally notified his Supervisor of the incident who found two individuals in the cab of the truck. Thus, the Arbitrator finds that timely notice of the accident was provided to Oswego Truck Center, et al.

F) and L) Is the petitioner's present condition of ill-being causally related to the injury and what is the nature and extent of injury?, the Arbitrator finds as follows:

By this reference, the Arbitrator adopts the Findings of Fact herein. Based upon the testimony and the evidence presented, the Petitioner proved that this current condition of ill-being of a man as a whole, is causally related to the work injury of November 11, 2021. The records reflect that Petitioner underwent psychological therapy during which time his condition improved. However, as a result of financial constraints and no benefits being provided, he was unable to continue with his therapy. Petitioner testified he attempted to find alternative work, but as a result of a lack of treatment he regressed and is unable to be gainfully employed. Thus, the Arbitrator finds that the Petitioner sustained disability to the extent of **45% loss of man as a whole** pursuant to **Section 8(d)(2)** of the Act.

J) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?, the Arbitrator finds as follows:

The medical care rendered to Petitioner as testified to and as reflected in the medical records was reasonable and necessary for any and all treatment through May 2, 2016. The Respondent shall pay the following medical bills in accordance with the Act and appropriate fee schedule:

1) Rusch Convenient Care	Outstanding balance	\$ 793.00
2) Family Counseling Service	Outstanding balance	\$1,520.27
	Total	\$2,313.27

K) and N) What temporary benefits are in dispute? And Is Respondent due any credit?

The Petitioner was temporarily totally disabled 41-6/7 weeks from November 11, 2021 through September 1, 2022, as well as another 78-1/7 weeks from August 31, 2023 through February 28, 2025. The Respondent shall pay the Petitioner temporary total disability benefits in the amount of \$690.00/week for 275 weeks, as referenced above, and as provided in Section 8(b) of the Act, as the injuries sustained caused the disabling condition of the Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC019045
Case Name	Luis Raul Flores Morales v. Nardulli Construction Company Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0018
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Rafael Guzman

DATE FILED: 1/26/2026

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LUIS FLORES MORALES
 Petitioner,

vs.

NO: 23 WC 019045

NARDULLI CONSTRUCTION COMPANY,
 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 disability, 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 1, 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 \$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.

January 26, 2026

O: 01/21/26

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	23WC019045
Case Name	Luis Raul Flores Morales v. Nardulli Construction Company Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Rafael Guzman

DATE FILED: 7/1/2025

*/s/Elaine Llerena, Arbitrator*Signature**INTEREST RATE WEEK OF JULY 1 2025 4.11%**

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)

Luis Raul Flores Morales

Employee/Petitioner

v.

Nardulli Construction Company Inc.

Employer/Respondent

Case # **23 WC 019045**

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 **April 22, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 16, 2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$7,149.61**; the average weekly wage was **\$1,787.40**.

On the date of accident, Petitioner was **57** years of age, *married* with **1** 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 \$1,191.60 per week for 94-6/7 weeks, commencing June 29, 2023, through April 22, 2025, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services to Illinois Orthopedic Network (\$13,345.17); Midwest Specialty Pharmacy (\$8,897.63); ATI Physical Therapy (\$29,437.75); Suburban Orthopaedics (\$2,276.00); Wilfredo Chevere, DC (\$890.00); and Round Lake Medical Imaging (\$2,420.00), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay and authorize prospective medical care in the form of a right portal L5-S1 and L4-L5 laminectomy as recommended by Dr. Dalip Pelinkovic, 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

JULY 1 2025

FINDINGS OF FACT:

This matter proceeded to hearing on April 22, 2025, in Chicago, Illinois before Arbitrator Elaine Llerena. The issues in dispute were accident, notice, causal connection, average weekly wage, medical expenses, prospective medical care, temporary total disability benefits, and penalties and attorney's fees. Arbitrator's Exhibit 1 (AX1). Petitioner testified through a Spanish language interpreter.

Testimony

Petitioner testified that he works in construction and has been a member of Laborers' Union Local 151 for ten years. (T. 12) Petitioner was assigned to work for Respondent by his foreman, Federico Cintora, and began working for Respondent on May 22, 2023. (T. 13) Petitioner received a W-2 statement from Respondent representing his entire wages, before the work accident in 2023, for the four weeks he worked for Respondent. (T. 15, PX6) Petitioner identified and introduced into evidence the four checks he received from Respondent in 2023. (T. 16, PX7)

Petitioner testified that on the morning of June 16, 2023, he was at work and lifting the "tamper," which weighed about 300 pounds, when he felt a "crack" in his back. (T. 17-18, 45) Petitioner continued working thinking it was not serious and would pass. (T. 20) Later in the day, while leveling cement with a shovel, Petitioner felt light pain in his back. (T. 20-21) Petitioner worked until about 5:00 p.m. or 5:30 p.m., after which he went home and took ibuprofen and laid down. (T. 21)

Petitioner testified that Mr. Cintora called him the following day, Saturday. (T. 22) Petitioner told Mr. Cintora that he was resting and experiencing pain and soreness in his lower back. (T. 22-23) Mr. Cintora again called Petitioner on Sunday and told him that there was no more work available and to wait one or two weeks when light duty work would be available. (T. 24-25) According to Petitioner, Mr. Cintora was going to call him when light duty work was available, but he never followed up with Petitioner. (T. 37)

On June 26, 2023, Petitioner sent a text to Mr. Cintora, in Spanish, regarding his paycheck. (T. 26-27, PX8, RX1) Mr. Cintora responded, in Spanish, indicating that Petitioner's check had been sent to Petitioner. (T. 29, PX8, RX1) On June 28, 2023, Petitioner again texted Mr. Cintora, in Spanish, and informed him that last Friday at work he was lifting the tamper when he felt something in his trunk/waist/low back area and had had pain ever since in the area and needed to see a doctor since he could no longer tolerate the pain. (PX8, RX1) Petitioner then added that it was on Friday, June 16th and that he was doing bad. *Id.* Petitioner testified that during the week or so following the work accident he experienced severe low back pain that radiated down his leg. (T. 27)

Petitioner testified that he had not experienced any back problems or treated for any back related problems prior to the June 16, 2023, work accident. (T. 31) Petitioner further testified that Mr. Cintora was also his supervisor at a previous job and that he and Mr. Cintora never had any issues working together. (T. 38-41)

Federico Cintora (Respondent's Witness)

Mr. Cintora testified that he is currently a foreman for Respondent and has worked in that capacity for three years. (T. 69-70) Mr. Cintora has worked as a foreman for about 30 years. (T. 70) His job duties include assigning employees to the appropriate job sites, ensuring all workers are accounted for, delegating tasks, overseeing concrete pours, supervising job performance, maintaining daily operations, and confirming that the proper tools and materials are available. (T. 69-70, 74, 88-92) Mr. Cintora explained that Respondent's work focuses on curbs, gutters, and sidewalks. (T. 71)

Mr. Cintora testified that typical working hours for Respondent are from 7:00 a.m. to 3:00 p.m., with overtime as needed. (T. 71) The tools used on the job include compactors, a Bobcat, hand tools, shovels, and others. (T. 72) Mr. Cintora personally transported the concrete tools, while a separate service pickup truck transported the compactors (tamper), curing compound pumps, and the drill. (T. 72, 78) Mr. Cintora knew Petitioner prior to their employment with Respondent, having worked with him at a previous company. (T. 73) Mr. Cintora testified that Petitioner obtained his job with Respondent through him. (T. 73-74)

On June 16, 2023, the crew began working at the Burbank job site. (T. 74-75) Mr. Cintora did not see Petitioner use the tamper that morning. (T. 77) Mr. Cintora estimated that the tamper weighs between 170 and 200 pounds. (T. 78) He explained that it typically takes two people to remove the tamper from the truck, and is equipped with wheels for mobility around the job site. (T. 79)

The cement truck arrived at approximately 9:00 a.m., and Petitioner was assigned to handle the chute. (T. 77) Petitioner's responsibilities included directing the truck, guiding it backward and forward, and controlling the concrete pour within the framework between the boards. (T. 77-79) Mr. Cintora explained that all workers, including Petitioner, performed some shovel work. (T. 78)

Mr. Cintora testified that before leaving for the second job site of the day, Petitioner did not inform him of any back injury. (T. 79-80) At the second job site, Petitioner was again assigned to handle the chute. (T. 80) The crew completed work around 4:30 p.m. that day. *Id.* At the end of the workday, Petitioner did not report any injury to Mr. Cintora, nor did any coworkers report that Petitioner had been injured. (T. 81) Mr. Cintora testified that if a worker is injured on-site, he reports it to the boss, Santino Nardulli, and if medical attention is required, they call 911. (T. 81-82)

Mr. Cintora called Petitioner the next day, Saturday, to inform him that he would not be needed on Monday. (T. 82) During that call, Petitioner did not mention any work injury to Mr. Cintora. (T. 83) Mr. Cintora did not recall whether he called Petitioner on Sunday or whether he offered Petitioner a light-duty position. (T. 82-83) He later contacted Petitioner to discuss the delivery of his paycheck. (T. 83-84) Mr. Cintora identified Respondent's Exhibit 1 as a series of text messages exchanged between him and Petitioner, in which Petitioner reported his work injury. (T. 85-86) Mr. Cintora read aloud from Respondent's Exhibit 1 during testimony and stated that the text message exchange was his last communication with Petitioner. (T. 95-101) After receiving Petitioner's text regarding the work injury, Mr. Cintora notified Mr. Nardulli about Petitioner's injury. (T. 86)

Mr. Cintora testified that his interactions with Petitioner were always friendly and without animosity. (T. 86-87) He also testified that another individual is in charge of the removal crew. (Tx. 102-103).

Santino Nardulli (Respondent's Witness)

Mr. Nardulli testified on behalf of Respondent. He testified that he is Director of Operations and that his responsibilities include managing all employees and overseeing day-to-day operations. (T. 106-107) He also has direct oversight over the removal process, is responsible for meeting project completion dates, directs work activities, places supply orders, including concrete, and provides direct support to employees. (T. 107) Mr. Nardulli explained that Respondent's business focuses on municipal concrete construction. *Id.* Each work site begins with a removal crew responsible for removing existing concrete or dirt. (T. 108) After removal, the crew frames the area with wooden forms and stakes and installs a stone base. *Id.* The base is compacted, concrete is poured within the framework, the forms are stripped, and the site is cleaned. *Id.* The concrete crew then performs its work, and there is typically some overlap when both crews are present on-site. (T. 109) Mr. Nardulli testified that he is generally present at the job sites, except when the removal crew moves on to the next project and an overlap occurs. (T. 108-109) He stated that equipment is transported to and from job sites

using his truck, Mr. Cintora's truck, or a support vehicle. (T. 109) As for the tamper, Mr. Nardulli described it as weighing approximately 150 to 200 pounds, with a width of about 18 inches to fit within the 19-inch-wide curb forms. It has four handles, allowing multiple individuals to lift it. (T. 109-110) It is only lifted when being moved on or off the truck, as it is equipped with retractable wheels and can be pushed when the wheels are deployed. (T. 110-111, 123-124)

Mr. Nardulli testified that he arrived at the job site on June 16, 2023, at approximately 6:00 a.m. (T. 111) He stated that he did not previously know Petitioner, who had been recommended by Mr. Cintora, but recognized him in the courtroom during testimony. (T. 112) According to Mr. Nardulli, on June 16, 2023, Petitioner was responsible for directing the concrete truck, controlling the speed and direction of the pour, and shaping the concrete into a rough form. (T. 113-114) Mr. Nardulli did not observe Petitioner handle, operate, or have any contact with the tamper that day. (T. 114) Mr. Nardulli explained that the tamper was not used at the second job site. (T. 118) He further explained that when a worker is injured, he completes internal and company logs and reports the incident to his insurance carrier. (T. 118-119)

Mr. Nardulli testified that he gave Petitioner his paycheck at the end of the day. (T. 117) He first learned of Petitioner's injury from Mr. Cintora, who forwarded him text messages from Petitioner. (T. 119) Mr. Nardulli then documented the injury and reported it to his insurance company. *Id.* Mr. Nardulli stated that he gave Petitioner's final paycheck to Mr. Cintora to take to Petitioner. (T. 119-120) He also testified that he instructed Mr. Cintora to notify Petitioner and another worker that they were laid off. (T. 120) Mr. Nardulli was not aware of any discussion regarding Petitioner returning to work in a light-duty position. (T. 121)

Summary of Medical Records

On June 29, 2023, the Petitioner saw Dr. Wilfredo Chevere. (PX1) Petitioner described the June 16, 2023, accident to Dr. Chevere, who examined Petitioner and diagnosed him as having left lumbar radiculopathy, lumbar disc herniation, and lumbar subluxation. Dr. Chevere found that Petitioner had experienced a work-related accident, performed chiropractic adjustments, provided Petitioner with hot packs, and took Petitioner off work. Petitioner followed up with Dr. Chevere on July 2, 2023. Petitioner's condition had not changed. On July 5, 2023, Petitioner underwent a lumbar spine MRI at Round Lake Medical Imaging, the results of which revealed a posterior broad-based disc herniation at L5-S1. (PX1, PX2, PX5) Petitioner also underwent an MRI of the thoracic spine, which showed hypertrophic spurring at multiple levels representing spondylosis.

On July 12, 2023, Petitioner underwent a telephonic consultation with Dan Clemente NP at Illinois Orthopedic Network (ION). (PX2) Petitioner reported having sustained a work accident and complained of low back pain that radiated down the right buttock to his right knee, as well as numbness and tingling in the same area when walking. Clemente reviewed the MRIs and diagnosed Petitioner as having low back pain, L5-S1 herniated disc and lumbar radiculopathy. Clemente ordered physical therapy, prescribed pain medication, referred Petitioner to an orthopedic surgeon, and kept Petitioner off work. Petitioner began physical therapy at ATI on July 25, 2023. (PX3)

On July 27, 2023, Petitioner saw Dr. Dalip Pelinkovic at Suburban Orthopaedics. (PX2) Petitioner reported the June 16, 2023, work accident and complained of acute low back pain. Dr. Pelinkovic performed a physical exam and noted an antalgic gait, tenderness, muscle spasms, pain, decreased sensation at L5-S1 and a positive straight leg raise on the right side. Dr. Pelinkovic diagnosed Petitioner with vertebrogenic low back pain, herniated disc at L5-S1, and muscle and tendon strain of the back wall of the thorax. Dr. Pelinkovic recommended an epidural injection and kept Petitioner off work. On August 30, 2023, Petitioner returned to ION and saw Dr. Krishna Chunduri. Petitioner reported the June 16, 2023, work accident and complained of

lower back pain with radiation of pain, numbness, tingling and weakness down his right leg. Dr. Chunduri noted that Petitioner had signs of pain and paresthesia and that his symptoms were consistent with the L5-S1 disc protrusion and radicular irritation. Dr. Chunduri agreed with Dr. Pelinkovic's recommendation of an injection and ordered a right L5 and S1 transforaminal epidural steroid injection. On October 5, 2023, the Petitioner had a telephone consultation with Dr. Chunduri. Petitioner reported no significant relief with physical therapy. Dr. Chunduri indicated that he would continue to seek authorization for a right L5-S1 transforaminal epidural steroid injection and kept Petitioner off work.

On February 7, 2024, Petitioner underwent an EMG, the results of which were right S1 radiculopathy. Also on February 7, 2024, Dr. Shoeb Mohiuddin administered a right L5-S1 lumbar transforaminal epidural steroid injection to Petitioner. Petitioner followed up with Dr. Pelinkovic on February 29, 2024, who kept Petitioner off work. On June 12, 2024, and August 8, 2024, Petitioner had telephone consultations with Dr. Mohiuddin. Dr. Mohiuddin ordered a new MRI of the lumbar spine to further assess Petitioner's L5-S1 disc herniation and kept Petitioner off work. Petitioner underwent the lumbar spine MRI on September 17, 2024, the results of which revealed diffuse disc bulges at L5-S1, L4-L5, L3-L4, and L2-L3; focal cranially directed central disc extrusion at L1-L2; mild bilateral facet hypertrophy with minimal facet joint effusions, mild bilateral subarticular recess narrowing, and moderate bilateral neuroforaminal narrowing at L5-S1; small bilateral facet joint effusions, mild right and moderate left subarticular recess narrowing and neuroforaminal narrowing at L4-L5; minimal right facet joint effusion and mild bilateral neuroforaminal narrowing at L3-L4; annular fissure at disc bulge at L2-L3; and mild left neuroforaminal narrowing at L2-L3.

Petitioner followed up with Dr. Pelinkovic on September 26, 2024, December 5, 2024, and January 16, 2025, who noted that Petitioner had not improved with conservative treatment, kept Petitioner off work, and opined that Petitioner's condition was causally related to the work injury and that Petitioner's treatment thus far had been medically necessary and appropriate. On December 5, 2024, Dr. Pelinkovic recommended a right portal L5-S1 and L4-L5 laminectomy. On February 20, 2025, Petitioner had a telephone consultation with Dr. Mohiuddin, who noted and agreed with Dr. Pelinkovic's surgical recommendation and kept Petitioner off work.

Petitioner's Current Condition

Petitioner testified that he has not worked in any capacity since the accident. (T. 33-34) He further testified that he was still experiencing pain. *Id.* According to Petitioner, all of his medical bills remain unpaid. (T. 34) Petitioner testified that he never received any letters from the insurance company, his employer, or any correspondence explaining why benefits were not being paid. (T. 35) Petitioner explained that all the medical treatment he has received since the date of the work accident relates to his back and the injury he sustained on June 16, 2023. (T. 37)

CONCLUSIONS OF LAW

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

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

A claimant has the burden of proving, by a preponderance of the evidence, all the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249 (1980); *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524 (1987). An injury arises out of one's employment if it has its origin in a risk that is connected to or incidental to the employment, so that there is a causal connection between the

employment and the accidental injury. *Technical Tape Corp. vs Industrial Commission*, 58 Ill. 2d 226 (1974). To be compensable under the Illinois Workers' Compensation Act (Act), the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury arises out of the claimant's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parra v. Industrial Comm'n*, 167 Ill. 2d 385 (1995).

The Arbitrator notes that Petitioner testified that he was performing tasks incidental to his employment when he injured his back using the tamper. Petitioner testified that he felt his back crack. Petitioner underwent medical treatment for his injury following the work accident and consistently reported that he suffered a back injury while working for Respondent to all medical personnel he saw. Mr. Cintora and Mr. Nardulli testified that they did not see Petitioner using the tamper on the day of the accident, but could not contradict that Petitioner used the tamper at work on that day. Additionally, the Arbitrator notes that Mr. Cintora and Mr. Nardulli confirmed that Petitioner reported the accident to Mr. Cintora, via text message, on June 28, 2023. Based on the totality of the evidence presented, the Arbitrator finds that Petitioner testified credibly regarding the June 16, 2023, work accident.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023. The Arbitrator further notes that Petitioner reported the accident to his foreman, Mr. Cintora, on June 28, 2023, well within the 45 days required under the Act. 820 ILCS 305/6(c).

Based on the above, the Arbitrator finds that Petitioner provided timely notice of his work accident under the Act.

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 her finding above that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023. The Arbitrator further notes that Dr. Pelinkovic opined that Petitioner's condition was causally related to the work injury. Additionally, Petitioner did not have any back problems prior to the June 16, 2023, work accident and was working full duty prior to the work accident. No evidence was provided indicating that Petitioner had been treating for or underwent treatment to his back prior to June 16, 2023. Circumstantial evidence, especially when 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 the accident and decreased ability to perform immediately after the accident. *Pulliam Masonry v. Industrial Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill. Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 666, Ill. Dec. 347, 442 N.E.2d 908 (1982). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63, 442 N.E.2d 908, 922 (1982). The

Arbitrator finds a clear chain of events in this case connecting Petitioner's currently condition of ill-being to the June 16, 2023, work accident.

Based on the above, the Arbitrator finds that Petitioner's condition of ill-being is causally related to the June 16, 2023, work accident.

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

The Arbitrator notes that while the Request for Hearing form indicates that there is a dispute regarding Petitioner's earnings, an alternative amount was not provided by Respondent. Further, the Arbitrator notes that the W-2 and checks entered into evidence show that Petitioner earned \$7,149.61 during the four weeks Petitioner worked for Respondent and prior to the work accident, resulting in an average weekly wage of \$1,787.40.

Based on the above, the Arbitrator finds that Petitioner's average weekly was \$1,787.40.

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

The Arbitrator notes her findings above that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023, and that Petitioner's current condition of ill-being is causally related to the June 16, 2023, work accident. The Arbitrator further notes that Dr. Pelinkovic opined that Petitioner's treatment had been medically necessary and appropriate. There is no evidence in the record contradicting Dr. Pelinkovic's opinion.

Based on the above, the Arbitrator finds that Respondent shall pay outstanding medical expenses to Illinois Orthopedic Network (\$13,345.17); Midwest Specialty Pharmacy (\$8,897.63); ATI Physical Therapy (\$29,437.75); Suburban Orthopaedics (\$2,276.00); Wilfredo Chevere, DC (\$890.00); and Round Lake Medical Imaging (\$2,420.00), 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 findings above that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023, and that Petitioner's current condition of ill-being is causally related to the June 16, 2023, work accident. The Arbitrator further notes that Dr. Pelinkovic found that Petitioner had not improved with conservative treatment and recommended a right portal L5-S1 and L4-L5 laminectomy. Additionally, Dr. Mohiuddin agreed with Dr. Pelinkovic's surgical recommendation. No contradictory medical opinion or recommendation was entered into evidence.

Based on the above, Respondent shall pay and authorize prospective medical care in the form of a right portal L5-S1 and L4-L5 laminectomy as recommended by Dr. Pelinkovic, 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 findings above that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on June 16, 2023, and that Petitioner's current condition of ill-being is causally related to the June 16, 2023, work accident. The Arbitrator further notes that Petitioner was taken off work on June 29, 2023. The medical records show that Petitioner has not been released to return to work by any treatment provider.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from June 29, 2023, through April 22, 2025, totaling 94-6/7 weeks.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner withdrew his Petition for Penalties and Attorney's Fees at the conclusion of the trial. (T. 140)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016470
Case Name	Randell Russell v. HydroChem PSC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0019
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Ivan Nieves, Andrea Carlson

DATE FILED: 1/26/2026

/s/Marc Parker, Commissioner

Signature

22 WC 016470

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Randall Russell,

Petitioner,

vs.

No. 22 WC 016470

Hydrochem PSC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator awarded Petitioner, *inter alia*, temporary total disability benefits totaling 150 weeks, from March 2, 2022 through January 14, 2025 – the date of the arbitration hearing. The Arbitrator found that Petitioner had been taken off work by Dr. Tennison and Devault on March 2, 2022.

The record, however, does not support commencing Petitioner's temporary total disability benefit on March 2, 2022. At arbitration, Petitioner testified that following his January 13, 2022

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accident, his nurse practitioner returned him to light duty work on January 17, 2022 – which, he also testified, Respondent was able to accommodate. Neither Dr. Tennison’s nor Dr. Devault’s records reported that they authorized Petitioner off work on March 2, 2022. Further, Dr. Verma reported Petitioner told him that he continued working for Respondent until May 2022. Dr. Solman’s records were even more specific, documenting Petitioner’s report that he worked light duty *until May 20, 2022*. Based upon this evidence, we find Petitioner’s temporary total disability benefit should commence on May 21, 2022, not March 2, 2022.

The evidence does support a finding that after May 20, 2022, Petitioner was given restrictions which Respondent did not accommodate, or was authorized totally off work by his treaters. Accordingly, we find the award of temporary total disability benefits through the date of arbitration, January 14, 2025, to have been appropriate.

Finally, we correct a clerical error in the temporary total disability award. Although the Arbitrator found Petitioner entitled to temporary total disability benefits through January 14, **2025**, the Order on page 2 of the Arbitrator’s Decision states that the period of temporary total disability shall run through January 14, **2024**. We correct that date to be January 14, **2025**. All else in the Arbitration Decision is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner’ temporary total disability benefits from May 21, 2022 through January 14, 2025, representing 138-4/7 weeks, at the rate of \$528.62/week, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that all else in the Decision of the Arbitrator filed February 6, 2025 is affirmed and adopted.

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

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

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

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

January 26, 2026

MP/mcp
o-01/15/26
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	22WC016470
Case Name	Randell Russell v. HydroChem PSC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Andrea Carlson, Ivan Nieves

DATE FILED: 2/6/2025

/s/ Adam Hinrichs, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 6 2025 4.16%

STATE OF ILLINOIS)
)SS.
 COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Randall Russell
 Employee/Petitioner

Case # **22** WC **016470**

v. Consolidated cases:

Hydrochem PSC
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on January 14, 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, **1/13/22**, 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 **\$39,647.16**; the average weekly wage was \$792.94.

On the date of accident, Petitioner was **38** years of age, *married* with **2** dependent children.

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

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

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

ORDER

Respondent shall pay the reasonable, necessary and related medical charges as outlined in Petitioner's group exhibit 8, totaling \$22,011.75. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall pay temporary total disability benefits from March 2, 2022 through January 14, 2024, representing 150 weeks, at Petitioner's TTD rate of \$528.62/week, as provided in Section 8(b) of the Act.

The Arbitrator finds that Dr. Solman's prescribed course of injections is reasonable and necessary to cure and relieve the effects of Petitioner's work injury, and orders Respondent to provide and pay for this treatment, pursuant to Section 8(a) and 8.2 and subject to the medical fee schedule, as well as any reasonable, necessary and related follow-up care.

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

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

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



Signature of Arbitrator

FEBRUARY 6 2025

FINDINGS OF FACT

Randall Russell (“Petitioner”) was a full-time Crew Lead for Hydrochem PSC (“Respondent”) since May 30, 2019. His job duties included general maintenance and cleanup of the Marathon Plant in Robinson, Illinois. He performed many tasks including Hydro blasting; vacuum truck work; carrying hoses up and down stairs; working in previous location such as up on scaffolding and down in holes. Petitioner testified that he used a number of tools such as pipe wrenches, big pumps, pressure washers, and hand tools today falls. He noted that he was on his feet 90% of the day and his job to be very physical.

Petitioner testified that prior to the work accident, he had no problems completing his job duties. Additionally, he was on no medical work restrictions, and was able to stand all day without any difficulties. Petitioner testified that in spite of being 6-feet-tall and weighing between 350 and 400 pounds while working for Respondent, he had no problems with either of his knees and was able to perform all of his job duties leading up to this work accident.

Petitioner testified that he also had a second job as a Bouncer and Security guard for The Corner Place. He testified that his job was essentially checking identifications at the door and walking around the bar to make sure nothing was going on. Petitioner testified that he did that for a couple of years on the side leading up to the accident.

On January 13, 2022, Petitioner was working at the Marathon Plant in the Cat Cracker Unit. He was working approximately 4 to 6 feet down in a hole using RSD equipment, which he described as a long hose that hooks to the end of a pipe and spins with multiple objects, in order to unplug a drain line. At the time of the accident, he was kneeling and trying to hook up the equipment when he slipped and fell forward, landing on his right knee and right hand. At the time, there was water in the hole that was approximately mid-thigh. When this happened, he testified that his right leg landed in murky water and his right knee struck a hard item.

Following the accident, Petitioner initially noted burning in both of his legs where the water had made contact. He would later find out that the water contained a caustic chemical that caused issues with his leg. Petitioner testified that following this accident, he had to climb out of the hole placing pressure on his knees against the wall as he climbed out. Petitioner noted that when he got out of the hole, he noticed burning, tingling and a sensation of fire in both of his legs.

Petitioner testified when this accident occurred, Supervisor Jake Miller was present and Petitioner told him about the symptoms in both of his legs. Petitioner also advised Mr. Miller of the trauma to his right knee. Petitioner testified that he initially had difficulty differentiating the symptoms in his leg stemming from the chemical burns as opposed to the traumatic injury.

Petitioner sought treatment that day at Marathon Health Services. Petitioner testified that he advised a nurse of the work accident and noted that he had first and second degree burns to his legs, chest and abdomen. Petitioner testified that the nurse never performed a physical examination on him and never examined his knees. Her treatment consisted of ointment for the burns as well as Tylenol for the pain.

The medical records from Marathon Health Services confirm that Petitioner was evaluated initially on January 13, 2022. The nurse reported that Petitioner was working in a hole with water when he slipped and fell into the water that had a PH of 13-14. He climbed out of the hole and was going to change clothes when his skin started heating up. He removed his wet clothes in the break room and reported to health services where he was placed in the shower for 10 minutes. He was noted to have pain that was 9.5/10 and was ultimately diagnosed with having first and second degree burns to his bilateral anterior legs, right lateral leg, left chest, and abdomen. (PX3, pp. 96-98)

Petitioner testified that when the burns to his legs began to heal, he continued to have significant pain and swelling in the right knee. By January 16, 2022, Petitioner confirmed that the nurse had properly recorded that he had bilateral knee joint pain that was improving, and that he still had soreness in the joints of his knees. Petitioner testified that the first time that he had problems with pain or swelling in his knee was following this work accident. (PX 3, p. 87)

On January 17, 2022, Petitioner was released to return to light duty. Respondent accommodated light duty by having him drive around in a truck performing safety activities. Petitioner testified that he had no real physical activities and simply drove around in a truck.

Petitioner continued to treat with the nurse at Marathon Health Services up until February 23, 2022. During all of the visits to this facility, Petitioner testified that the nurse never examined his right knee nor did she ever provide any recommendations for treatment on the right knee. The medical records from Marathon Health Services show that Petitioner continued to follow-up with the nurse who recorded ongoing bilateral knee joint pain. Although no physical examinations were completed, the nurse noted that Petitioner continued to complain of swelling and pain in his knees. (PX3)

Due to ongoing problems with his right knee, on March 2, 2022, Petitioner was seen at Crawford Memorial Hospital-Robinson Rural Health Clinic by Dr. Gary Tennison. Petitioner had treated with this facility since 2017, with no indication of any prior treatment to the right knee with the exception of the venous Doppler on September 29, 2021. At his March 2, 2022 visit, Dr. Tennison noted Petitioner's right knee symptoms began following the work accident of January 13, 2022. At that time, he was noted to have right lower leg weakness, with the leg wanting to give out without warning. Following evaluation, Dr. Tennison sent Petitioner for an x-ray of the right knee and then referred him to Dr. William Devault. (PX 4, pp. 122-127)

On March 16, 2022, Petitioner was evaluated by Dr. Devault, who references the chemical burn as well as right knee symptoms indicating that Petitioner indicated "they told him it was not associated with his right knee." Dr. Devault reported that there was no specific injury to the right knee but noted that that Petitioner does heavy activities at work. (PX5, p. 85)

Following evaluation, Dr. Devault referred Petitioner for a CT arthrogram of his right knee which was completed on July 25, 2022. While Dr. Devault found no tearing of the meniscus on CT, he kept Petitioner off work and advised him lose weight. (PX5, p. 31-37)

Petitioner testified that he personally handed his off-work slips to his manager, Jeremy.

While treating with Dr. Devault, Petitioner was referred for physical therapy. Medical records from Crawford Memorial Hospital Physical Therapy indicate that Petitioner's right knee pain started following the chemical burn to his right lower extremity. The therapist noted that Petitioner had gained nearly 70 pounds since the right knee accident.

Petitioner testified that he received a letter on September 19, 2022, indicating that he was to be terminated for not providing work slips, and had a few days to comply. (PX 9). Petitioner's counsel immediately sent an email to the Respondent advising that the off-work slips had been provided to their attorney and this should correct any misunderstanding. (PX 10). It did not, and the Petitioner was terminated.

On November 4, 2022, Petitioner was referred by his attorney to Dr. Corey Solman for a Section 12 examination. Dr. Solman recorded the work accident and noted that Petitioner developed right knee pain when he slipped and fell in the mud while working in a hole. Dr. Solman completed a medical evaluation and recommended a CT arthrogram with contrast to evaluate intra-articular pathology. He recommended treatment options including PRP stem cell injections as well as diagnostic lidocaine injections. Dr. Solman noted that Petitioner's BMI of 75 may preclude him from undergoing surgery. Dr. Solman related Petitioner's right knee to the work accident due to the lack of prior problems with the right knee; trauma to the right knee; and physical examination findings consistent with the trauma and his ongoing complaints in the right knee. Dr. Solman continued Petitioner off work pending further testing and treatment. (PX1, pp. 86-90) Petitioner began to treat with Dr. Solman following this exam.

On March 1, 2023, Respondent sent Petitioner to a Section 12 evaluation with Dr. Nikhil Verma. Petitioner testified that Dr. Verma spent less than five minutes with him. Petitioner testified that he advised the doctor of his right knee problems beginning after this work accident. Dr. Verma concluded the Petitioner's right knee problems were not documented as having begun following this work accident. (RX3)

Petitioner testified that Dr. Verma's history on this was inaccurate as he had advised Supervisor Miller as well as the nurse at Marathon Health Services of the onset of right knee symptoms following the work accident.

On February 15, 2024, Petitioner underwent a CT arthrogram of the right knee with contrast. This was read by the radiologist as showing a complex tear of the medial meniscus body with mild peripheral extrusion into the lateral recess; diffuse intermediate grade partial thickness chondrosis of the central weight bearing surfaces of the medial tibial plateau and femoral condyle with areas of deep partial thickness chondrosis peripherally. The lateral compartment showed mild diffuse partial thickness chondrosis of the central weight bearing portion of the lateral compartment with areas of deep partial thickness chondrosis in the central weight bearing lateral tibial plateau. (PX6)

Petitioner noted that when he was evaluated by Dr. Verma he had not yet completed the second CT arthrogram.

Petitioner testified that he has not returned to work for either Respondent or, in his secondary employment as a bouncer. During his off-work period, he has not been paid any lost time benefits by the Respondent.

On June 17, 2024, Petitioner followed up with Dr. Solman who reviewed the updated CT arthrogram with contrast, and noted that there was no change in pathology, and that the new testing confirmed a medial meniscus tear. Dr. Solman noted that Petitioner had gained 150 pounds since the accident, and was starting to have left knee pain due to overcompensating for the right knee. Dr. Solman recommended PRP injections into the knee with consideration of surgery to correct the medial meniscus tear. (PX1, pp. 77-78)

Petitioner testified that he has had no new injuries to his right knee. However, he continues to have pain in his right knee that is located throughout the entire knee. He confirmed that this was the location where his knee landed and fell in the hole. Petitioner also noted swelling and weakness in his knee that causes the knee to buckle. Petitioner noted that the buckling is an everyday occurrence which sometimes causes him to fall to the floor. He testified that his symptoms are ongoing.

Petitioner testified that he wants to move forward with the treatment recommended by Dr. Solman in order to get back to work. Petitioner testified to medical bills identified as Petitioner's Exhibit 8, and stated that these medical bills totaling \$22,011.75, were related exclusively to the work accident of January 13, 2022.

Surveillance

Respondent entered into evidence two surveillance videos. The first video was taken on January 20, 2023. Petitioner is seen getting in and out of his vehicle with difficulty. He is also seen entering and leaving buildings. At the 9:39 mark, he is seen descending steps primarily leading with his left foot, but on two occasions his right foot is placed on the next step while his left foot is planted, all while holding the rail with his left hand. Petitioner is seen entering and leaving a gas station before returning home. Petitioner is not seen lifting or carrying any items of significant weight. While walking in these videos, Petitioner appears to ambulate in a manner slightly favoring his right side, this is also apparent when he is entering and exiting his vehicle. However, given Petitioner's body size it is challenging to distinguish between any modifications made for his right knee, and simply the operation of his very large body. (RX1)

The second video was taken on February 26, 2023. Petitioner is seen cleaning out his vehicle and removing trash to place it into a nearby trash can. Petitioner appears to be walking with the same gait that was seen on January 20, 2023. Once again, Petitioner is not seen lifting or carrying any items of significant weight. (RX2)

Dr. Corey Solman Deposition Testimony

On June 25, 2024, the parties deposed Dr. Corey Solman. Dr. Solman testified consistent with his medical report and records. Dr. Solman testified that he first evaluated Petitioner on November 4, 2022. At the time of that visit, he recorded a history of Petitioner having injured his right knee on January 13, 2022, when he slipped and fell on mud, landing on a pipe. Petitioner originally suffered

burns to his leg from acidic fluid, but then noted ongoing right knee problems after the burns healed. (PX 1, pp. 7-8)

Dr. Solman reviewed the medical records regarding Petitioner's medical treatment leading up to his visit. He testified that the treatment records were consistent with Petitioner's history of the work accident. He further noted that Petitioner was unable to complete a conventional MRI due to his size, and was only able to complete a CT scan. Dr. Solman noted that a CT scan is less accurate than an MRI, which is why contrast is usually injected into the knee joint when it is performed. Dr. Solman noted that this was not completed initially which is why he requested a second CT scan with contrast. (PX 1, pp. 8-12)

Dr. Solman testified that during his initial evaluation, he identified findings consistent with meniscal pathology. Dr. Solman noted that Petitioner had tenderness over the meniscus joint line; pain with flexion; and a positive McMurray's exam. Dr. Solman reviewed the CT arthrogram from July 26, 2022, and felt that it showed a cleft, or a small little tear, in the posterior horn of the medial meniscus where it attaches at the back of the tibia. Dr. Solman disagreed with the radiologist, and noted that he reviewed the CT arthrogram in conjunction with the physical examination, which allowed him to look specifically for more rare types of injuries and/or soft tissue pathologies. Dr. Solman noted that Petitioner weighed 500 pounds, and had undergone a gastric bypass in 2009, and had no issues with the knee prior to his work injury. (PX 1, pp. 13-20)

Dr. Solman concluded that based upon Petitioner having no prior problems; a mechanism of injury of trauma to the knee; and no significant advanced arthritic changes in the knee, he concluded that Petitioner had meniscal pathology or other intra-articular pathology of the right knee. Dr. Solman attributed this condition to the work accident of January 13, 2022. He noted that it is very common for patients who have slip and fall injuries or twisting injuries to sustain a ligament tear or meniscus tear. Petitioner's description of injury of being in a hole when he slipped and fell is a type of mechanism that leads to a meniscus tear. (PX1, pp. 21-24)

Dr. Solman testified that Petitioner had no symptoms in the contralateral knee, and no problems with the right knee until after the work accident. Further, Dr. Solman noted that the symptoms described by Petitioner began immediately following the accident, and were consistent with a meniscus tear. (PX1, p. 24)

On July 26, 2023, Dr. Solman reviewed the surveillance videos. Dr. Solman described in detail his understanding of the activities in each video, including his favoring of his right leg and lack of any heavy activities, and concluded that there was nothing seen in the surveillance video that was inconsistent with his physical examination or Petitioner's subjective symptoms that were described to him. Consequently, Dr. Solman's diagnosis and recommendations for care remained the same. (PX1, pp. 32-34)

By June 17, 2024, Petitioner completed a new CT arthrogram with contrast. Dr. Solman reviewed the new test and found that it revealed increased signal at the posterior area of the medial meniscus at the meniscocapsular junction which was similar to the initial CT scan. Dr. Solman noted that the test results showed an abnormality where the meniscus attaches in the back of the knee close

to its root attachment onto the bone. He testified that that is a very important attachment because it helps to confer stability to the meniscus itself as well as to the knee itself. (PX1, pp. 34-36).

Dr. Solman testified that based upon his review of the new CT scan with contrast, it was consistent with the nature of the work accident as well as Petitioner's symptomology. Dr. Solman testified that he had seen this condition in the past and was able to successfully repair this on a surgical level. Dr. Solman continued to relate the meniscus injury and need for treatment to the work accident of January 13, 2022. Dr. Solman testified that the work accident either caused the meniscus to tear or it made a previously asymptomatic tear symptomatic. Regardless, Dr. Solman testified that the need for treatment was because of the symptomatic state of the meniscal tear. (PX1, pp. 36-40)

Dr. Solman testified that if Petitioner were a good surgical candidate, he would recommend surgical care in the form of an arthroscopy of the right knee with the medial meniscus repair. However, Dr. Solman noted that Petitioner cannot safely undergo surgery due to his BMI. Therefore, Dr. Solman recommended injections to mitigate symptoms and increase functionality. If the injections failed, then surgery would be appropriate, but only if Petitioner lost weight. Dr. Solman testified that he would continue to provide Petitioner with the same work restrictions until further appropriate treatment could take place. Dr. Solman noted that if further treatment was not wanted, or could not be safely performed, Petitioner's work restrictions would become permanent. However, Dr. Solman, felt further care was necessary in order for Petitioner to reach MMI. (PX1, pp. 40-43)

On cross-exam, Dr. Solman testified that Petitioner's mechanism of injury, hitting a pipe with his knee would have caused a contusion, but not a meniscal tear. (PX1, p. 47). However, the slipping into the hole, and with a large BMI, can impart the force necessary to cause a meniscal tear. (*Id.* at 46).

Dr. Nikhil Verma Deposition Testimony

On July 17, 2024, the parties deposed Respondent's examiner, Dr. Nikhil Verma. Dr. Verma examined Petitioner on March 1, 2023. Dr. Verma testified that Petitioner's injury occurred when he stepped into a hole that was filled with fluid. He noted that Petitioner fell forward onto his right knee with skin to contact to the fluid. Dr. Verma noted that there was no indication of any prior history of knee symptomology. (RX3, pp. 19-20)

Dr. Verma reviewed medical records and examined the Petitioner. Dr. Verma concluded that he was unable to clearly relate the right knee condition to the work injury. He read the initial CT arthrogram report and scan, noting no evidence of objective pathology. Further, he did not see any initial complaints to the right knee pain that would be associated with traumatic injury other than skin burns caused by the chemical exposure. Dr. Verma diagnosed subjective knee pain secondary to morbid obesity. Finally, Dr. Verma concluded that his review of the surveillance videos did not indicate that Petitioner was walking with an antalgic gate. As a result, Dr. Verma concluded that Petitioner was at maximum medical improvement and was capable of returning to work full duty. (RX3, pp. 20-31)

On cross-examination, Dr. Verma testified that his evaluation was 15 minutes and the physical examination was limited to less than five minutes. Further, the doctor testified that he reviewed no medical records past his supplemental report of June 13, 2023, and therefore he did not review the updated CT arthrogram with contrast that was completed on February 15, 2024. (RX3 pp. 35-37)

Dr. Verma testified that prior to the work accident, Petitioner was capable of performing all of his job duties which involved climbing ladders, pushing, pulling, carrying, grasping, reaching, crawling, stooping, crouching in confined spaces without any problems with his knee. He also testified that Petitioner's first history of any symptoms to the right knee was following the work accident when Petitioner, with his 500-pound body, slipped and fell into a hole, landing directly onto his right knee. (RX3 pp. 37-39).

Dr. Verma was provided with the medical record of January 15, 2022, where the nurse at Marathon Health services noted that Petitioner was having increased pain, trouble standing up and increased swelling around the thighs and knees. Dr. Verma acknowledged the pain and swelling in the knee, as well as Petitioner having difficulty standing up, which are things he testified he would be looking for with an intra-articular knee injury. Dr. Verma acknowledged that he saw no physical examination of the knee when reviewing the notes of the nurse. (RX3 pp. 43-44)

Dr. Verma testified that as he reviewed the surveillance videos, he believed that Petitioner was walking without a limp. (RX3, pp. 55-56)

CONCLUSIONS OF LAW

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

Petitioner testified that on January 13, 2022, he was kneeling in a hole trying to hook up equipment when he slipped and fell landing on his right knee and right hand. Petitioner testified to having immediate symptoms in his right knee. Petitioner followed up immediately at Marathon Health Services and the medical records diagnosed first and second degree burns to the bilateral legs, bilateral knee joint pain as well as soreness in the joints of the knees. Petitioner followed up for care promptly and frequently, and described pain, weakness and swelling in the right knee following the accident.

Petitioner was evaluated by orthopedic surgeon, Dr. Corey Solman, to whom he provided a consistent history of accident of having developed right knee pain after slipping in the mud while working in the hole. Dr. Solman recommended a CT arthrogram that included contrast. This testing confirmed a tear of the medial meniscus. Dr. Solman reviewed the medical records and confirmed that the initial treating records confirmed injury to the right knee, although it was initially masked by the burns to both lower extremities. Dr. Solman noted that all of Petitioner's right lower extremity problems began following this accident, which was confirmed by the medical records.

Dr. Solman testified that the work accident either caused the meniscus to tear or it made a previously asymptomatic tear symptomatic. Regardless, Dr. Solman testified that the need for

treatment was because of the symptomatic state of the meniscal tear. (PX1, pp. 36-40) Dr. Solman further testified that Petitioner's mechanism of injury, hitting a pipe with his knee would have caused a contusion, but not a meniscal tear. (*Id.* at 47). However, the slipping in the hole, and having a large BMI, would impart the force necessary to cause a meniscal tear. (*Id.* at 46).

Respondent's examiner, Dr. Verma, did not find the meniscal tear related to the work accident based on a lack of onset of knee problems in the medical notes, as well as his review of the surveillance video, which he opined did not show Petitioner to be limping.

However, when Dr. Verma was provided with the medical record of January 15, 2022, two days after the accident, where the nurse at Marathon Health services noted that Petitioner was having increased pain, trouble standing up and increased swelling around the thighs and knees. Dr. Verma acknowledged that the pain and swelling are things he would look for with an intra-articular knee injury. Dr. Verma acknowledged that Petitioner had no right knee complaints prior to the accident date. Moreover, Dr. Verma did not review the updated CT scan with contract that showed a meniscal tear. (RX3 pp. 35-44)

Based on the foregoing, the Arbitrator is persuaded by the opinion of Dr. Solman, as it is consistent with the sequence of events, the treating medical records, the objective medical, and the Petitioner's un rebutted and credible testimony.

Given the sequence of events, the opinion of Dr. Solman, Petitioner's un rebutted and credible testimony and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in his right knee is causally related to the work accident of January 13, 2022.

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

Incorporating the above, the Arbitrator finds that all of medical services provided to Petitioner for the treatment of his right knee was reasonable, necessary, and related to his work injury. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care as outlined in Petitioner's Exhibit 8, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

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

Incorporating the above, the Arbitrator finds that the Petitioner is entitled to prospective medical treatment, as he has yet to reach maximum medical improvement.

Petitioner's treating surgeon, Dr. Solman testified that if Petitioner were a good surgical candidate, he would recommend surgical care in the form of an arthroscopy of the right knee with a medial meniscus repair. However, Dr. Solman noted that Petitioner cannot safely undergo surgery due to his BMI. Therefore, Dr. Solman recommended injections to mitigate symptoms and increase functionality. If the course of injections failed, then surgery would be appropriate if Petitioner lost weight. Dr. Solman testified that he would continue to provide Petitioner with the same work restrictions until further appropriate treatment could take place. Dr. Solman noted that if further treatment was not wanted, or could not be safely performed, Petitioner's work restrictions would become permanent. However, Dr. Solman, testified that he believed further medical care was necessary in order for Petitioner to reach MMI. (PX1, pp. 40-43)

The Arbitrator finds that Dr. Solman's prescribed course of injections is reasonable and necessary to cure and relieve the effects of Petitioner's work injury, and orders Respondent to provide and pay for this treatment, pursuant to Section 8(a) and 8.2 and subject to the medical fee schedule, as well as any reasonable, necessary and related follow-up care consistent with Dr. Solman's recommendation for arthroscopic knee surgery if a series of injections fails, and only if the Petitioner loses the appropriate amount of weight to become a surgical candidate.

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

Incorporating the above, following the work accident of January 13, 2022, Petitioner was initially provided light duty restrictions which were accommodated by the Respondent.

However, effective March 2, 2022, Petitioner was taken off work by his treating doctors, Dr. Tennison and Dr. DeVault. Subsequently, Dr. Solman provided Petitioner with work restrictions that Respondent could not accommodate. Respondent terminated Petitioner in the autumn of 2022.

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period of March 2, 2022, until January 14, 2025, totaling 150 weeks at his TTD rate of \$528.62/week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC008907
Case Name	Kyle Brumleve v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0020
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/26/2026

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kyle Brumleve,

Petitioner,

vs.

NO: 24 WC 008907

State of Illinois/Menard
 Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2025, is hereby affirmed and adopted.

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

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

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.

January 26, 2026

MP:yl

o 1/15/26

68

/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC008907
Case Name	Kyle Brumleve v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 6/3/2025

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



June 3, 2025

*/s/ Bradley Gillespie, Arbitrator*_____
Signature*/s/ Michele Kowalski*

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF JUNE 3 2025 4.15%

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

Kyle Brumleve

Employee/Petitioner

v.

State of IL / Menard C.C.

Employer/Respondent

Case # **24** WC **08907**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 3, 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 **March 26, 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 **\$74,860.20**; the average weekly wage was **\$1,439.61**.

On the date of accident, Petitioner was **35** years of age, *single* 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 **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$959.74/week for 1 2/7 weeks, commencing April 13, 2024 through April 17, 2024, and from May 22, 2024 through May 27, 2024, as provided in Section 8(b) of the Act.

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

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

Respondent shall pay Petitioner compensation that has accrued from June 6, 2024, through April 3, 2025, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of \$863.76/week for 122.025 weeks, because the injuries sustained caused the 15% loss of Petitioner's right arm, the 15% loss of Petitioner's left arm, the 12.5% loss of Petitioner's right hand, and the 10% loss of Petitioner's left hand, as provided in Section(s) 8(e)9 and 8(e)10 of the Act.

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

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

Bradley D. Gillespie

Signature of Arbitrator

JUNE 3 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KYLE BRUMLEVE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: 24WC008907
	)	
STATE OF ILLINOIS/MENARD	)	
CORRECTIONAL CENTER,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR**FINDINGS OF FACT**

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's Motion for a hearing on all issues on April 3, 2025, at Herrin, Illinois. (Arb. Ex. 1) Issues in dispute were accident, causal connection, liability for medical bills, liability for temporary total disability benefits, and the nature and extent of Petitioner's injuries. (Arb. Ex. 1; Tr. pp. 5-6)

BACKGROUND

Petitioner filed an Application for Adjustment of Claim on April 1, 2024, alleging injuries due to repetitive duties on March 24, 2024, which affected his bilateral wrists, hands, elbows and arms. (Arb. Ex. 2)

PETITIONER'S TESTIMONY

Petitioner testified that he currently works at the Vienna Correctional Center and transferred over there on July 1, 2024. (Tr. p. 11) Prior to his injuries and treatment, Petitioner was employed at Respondent's Menard Correctional Center for nine years as a correctional officer and for one year as a correctional sergeant. (Tr. p. 12) Prior to working for Respondent, Petitioner was a laborer and performed raking of asphalt and concrete and carrying concrete forms, which he testified was hand intensive. (Tr. pp. 12-13) Prior to this, he worked for a construction company where he performed hand intensive activities of loading and unloading trucks. (Tr. p. 13)

During the course of his employment with Respondent, he noticed that his hands began going numb, tingling, and burning. (Tr. p. 14) Petitioner testified that the duties of a correctional officer and a correctional sergeant are essentially the same, except the position as a sergeant requires additional paperwork. (Tr. p. 12)

He testified that he used Folger Adams keys and performed bar rapping, shakedown, property box searches, and cuffing and uncuffing of inmates. (Tr. pp. 14-15) He testified that he performed these activities at nearly the same rates that are described in the Corvel job analysis, post description, and DVD, which were marked as Petitioner's Exhibits 11, 12 and 13. (Tr. pp. 14-15)

He testified that he worked in segregation for nine-and-a-half years. (Tr. p. 22-23) There, he used Folger Adams keys on the door and the deadlock on the door. (Tr. pp. 28-29) He approximated that he let inmates in and out of cells 30 to 100 times per day. (Tr. pp. 29-30)

He testified that in segregation, there are both barred and solid doors depending on the gallery. (Tr. p. 23) Petitioner testified that the wing where he worked was made up of solid steel doors with chuck holes. (Tr. pp. 24-25) In segregation, there is a similar, if not greater, number of doors to open than on a regular gallery. (Tr. pp. 30-31) He testified that he performed bar rapping over the windows and entryways to the galleries as well as on bar cells on the galleries toward the front. (Tr. p. 25) When asked if there was less bar rapping in segregation than on a normal gallery, Petitioner testified, "No, I don't believe so. Like all the bars -- the solid steel doors and then like on the outside, there's bars on the outside of the doors, if that makes sense." (Tr. p. 25) He explained that the solid doors had two layers and there were multiple rows of bars outside the steel doors. (Tr. pp. 25-26)

MEDICAL EVIDENCE

On March 26, 2024, Petitioner presented to Dr. Matthew Bradley with symptoms of bilateral elbow, wrist and hand pain numbness and tingling. (PX 3p. 2) The right was slightly worse than the left. *Id.* His symptoms have been present for at least two to three years but same had increased significantly during the past six months. *Id.* Dr. Bradley noted that Petitioner worked as a sergeant at Menard Correctional Facility for the past year and had worked as a correctional officer the nine years prior to that. *Id.* He had a history of utilizing Folger Adams keys multiple times per day as well as daily bar rapping. (PX 3 p. 2) He noted that Petitioner did not perform as much bar rapping as he had previously done, but he still did so from time to time. *Id.* His work activities also included pulling on heavy doors within the segregation unit. *Id.* Dr. Bradley noted that Petitioner had spent the majority of his 10 years working in the segregation unit. *Id.*

Dr. Bradley indicated that Petitioner did not have any hobbies that contributed to the development of carpal or cubital tunnel syndrome. (PX 3 p. 2) He noted that a detailed job description was completed and scanned into the chart. *Id.*

On exam of the elbows, Petitioner had bilateral pain to palpation over the medial epicondyles, tingling over the small fingers, and positive Tinel's. (PX 3 pp. 2-3) Exam of the bilateral hands and wrists showed numbness and tingling bilaterally over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, and markedly positive Phalen's, Tinel's, and Finkelstein's testing. (PX # p. 3) X-rays were performed, which

showed no acute fractures or dislocations, but a small ossicle, possibly from an old avulsion of the tip of the olecranon. (PX 3 pp. 3-4)

Dr. Bradley noted that he was able to get Petitioner in for an EMG and nerve conduction study that day, which was performed by Dr. Daniel Phillips. (PX 3 p. 4; PX 4) The impression was severe right worse than left sensorimotor axial median neuropathy across the carpal tunnels, and mild demyelinative ulnar neuropathy across the right cubital tunnel, and a greater degree of left ulnar neuropathy across the elbow with partial sensory axonal involvement. (PX 4 p. 2)

Dr. Bradley reviewed the EMG and nerve condition study, and his assessment was bilateral carpal and cubital tunnel syndrome, with the right being symptomatically worse than the left. (PX 3 p. 4) Given the severity of Petitioner's carpal tunnel, Dr. Bradley felt that nonoperative treatment would not only fail but would put Petitioner at a higher risk for permanent nerve damage. *Id.* He recommended surgical intervention and same was planned. *Id.* That same day, Dr. Bradley performed a right DeQuervain's tenosynovitis injection in the office. *Id.*

On April 12, 2024, Petitioner underwent surgery with Dr. Bradley in the form of an open right cubital tunnel release with ulnar nerve transposition, a right carpal tunnel release, and a right wrist DeQuervain's injection. (PX 3 pp. 7-10; PX 6) Intraoperatively, the cubital tunnel was very thickened and upon release, the nerve was unstable and transposed over the medial epicondyle, resulting in the need for transposition. (PX 3 p. 8) Distally, the transverse carpal ligament was very thickened, causing flattening of the underlying median nerve. *Id.* Petitioner was kept on off work through April 17, 2024, after which he was returned to restrictions of desk work only. (PX 3 p. 11)

Petitioner returned to Dr. Bradley on April 25, 2024, and indicated that he still had some stiffness in his hands; however, his numbness, tingling and burning had almost completely resolved on the right. (PX 3 p. 12) On the left, he continued to be symptomatic and wished to move forward with surgical intervention in order to return to work. *Id.* He given restrictions of desk work only. (PX 3 p. 15)

On May 22, 2024, Petitioner underwent an open left cubital tunnel release with ulnar nerve transposition and open left carpal tunnel release with Dr. Bradley. (PX 3 pp. 18-20; PX 7) Intraoperatively, the transverse carpal ligament was thickened, causing flattening to the underlying medial nerve. (PX 3 p. 18) The cubital tunnel was released, and the ulnar nerve was noted to be decreased in diameter approximately 50% across the carpal tunnel. *Id.* The nerve was unstable and transposing over the tip of the medial epicondyle which necessitated the transposition. *Id.* Petitioner was kept off work through May 27, 2024, after which he was given restrictions of desk work only. (PX 3 p. 21)

On June 6, 2024, Petitioner returned to Dr. Bradley, who noted that his right upper extremity was normal with good range of motion and strength, and his left was significantly improved, with some residual tingling in the tip of the small digit. (PX 3 p. 22) Dr. Bradley

anticipated that this would continue to resolve.(PX 3 p. 24) He placed Petitioner at maximum medical improvement and returned him to work with no restrictions. *Id.*

SECTION 12 REPORT AND DEPOSITION OF DR. STEWART

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Patrick Stewart on August 15, 2024. (RX 2) Dr. Stewart noted that Petitioner had numbness and tingling in his bilateral hands, digits, forearms, and elbows with a gradual onset of symptoms over the past two to three years. (RX 2 p. 3) Petitioner related to his symptoms to lifting and overuse. *Id.* He noted that Petitioner's BMI was 42.2 and his past medical history included hypertension, hypothyroidism, hypercholesterolemia, and reflux, and that Petitioner's medications included lisinopril, atorvastatin, levothyroxine and omeprazole. (RX 2 p. 4)

Dr. Stewart indicated that he reviewed the CMS job description of a correctional sergeant at Menard with Petitioner. (RX 2 p. 4) He indicated that Petitioner had primarily worked in segregation as both a correctional officer and sergeant. (RX 2 p. 5) He performed bar rapping when he worked on the general population unit once per shift and same took five to six minutes. *Id.* He indicated that in segregation, there were only solid doors and that "the indication that bar wrapping [sic] would be a significant part of his job is not accurate." (RX 2 p. 8) He indicated that items would be passed through chuckholes or if items were too big, they would require the entire door being opened. (RX 2 p. 5) He stated that these tasks required the use of Folger Adams keys, and that as an officer, the chuck doors would have to be opened and closed approximately 100 times per day. *Id.* He noted that opening doors with Folger Adams keys took three to four seconds if things were working appropriately. *Id.* Petitioner reported that there were doors which were very difficult open and that he could struggle with them for several minutes. *Id.* He noted that Petitioner performed work with handcuffs a few times per day. (RX 2 p. 5)

His impression was status post bilateral carpal tunnel releases and bilateral cubital tunnel releases with subcutaneous transposition and fascial sling stabilization.(RX 2 p. 6) He indicated that Petitioner was very direct and forthright with the exception of when he was asked who referred him to Dr. Phillips. (RX 2 p. 7) Dr. Stewart did not believe there was a causal relationship between Petitioner's findings and the accident, as Petitioner had a BMI of 42 as well as thyroid disease. *Id.*

Dr. Stewart stated that Petitioner's activities had decreased in the past year when he became a sergeant, and he opined that if Petitioner's symptoms were related to his job activities, his symptoms would have decreased or improved instead of worsened. (RX 2 p. 8) He stated that the indication that bar rapping was a significant part of Petitioner's job was not accurate because the segregation department had solid doors. *Id.*

He felt that the opening and closing of chuck doors and larger doors would take nominal time. *Id.* He acknowledged that the larger doors required use of a Folger Adams key but felt that instead of posing an increased risk for officers, using a Folger Adams key would decrease risk verses using a simple key. *Id.*

He stated that Petitioner spent under 10 minutes of any given day performing this activity and that there was a much greater period for recovery and therefore he felt that this eliminated repetitive risk. (RX 2 p. 8) He indicated that Petitioner demonstrated “to some degree” that pushing required leaning the entire body forward, and Dr. Stewart stated that “the door was actually not grasped and did not require force as far as the arms or hands.” *Id.* However, he indicated that pulling the door closed did require grasp. *Id.*

When discussing chuckholes, padlocks, and deadlocks, he stated “there was no indication that any of these tasks were problematic or there was difficulty as far as opening or closing or sliding.” (RX 2 p. 8)

He felt that Petitioner’s medical treatment had been reasonable and necessary, except for the x-rays, as there was no history of trauma. (RX 2 pp. 8-9)

Dr. Stewart testified via deposition on February 11, 2025. (RX 3) On direct examination, he testified consistently with his report. He testified that he performs one to two IMEs and one to two depositions per month, and charges \$2,500 per exam and \$1,200 for depositions. (RX 3 pp. 21-22) He is not board-certified in orthopedic or plastic surgery. (RX 3 p. 25)

Regardless of causation, he felt that Petitioner’s carpal tunnel releases were reasonable and necessary. (RX 3 pp. 57-58) With respect to the cubital tunnel, he felt he stated that he was not able to exam Petitioner prior to his surgeries, and therefore did not know how severe his cubital tunnel was, and that the reasonableness of his treatment depended on “ferreting out the symptoms” and making sure that same were significant enough for the surgical intervention. *Id.*

Dr. Stewart testified that he reviewed the job description provided by CMS and did not review the work history timeline or job description prepared by Petitioner and instead gathered information from Petitioner regarding his position. (RX 3 p. 31) He testified that he was not provided with a job site analysis, demands of the job form, or videos depicting the duties of a correctional officer at Menard, nor was he provided any Commission decisions regarding Menard carpal and cubital tunnel cases. (RX 3 pp. 31-34)

He testified that he had examined other officers employed at Menard, but he did not have a recollection as to whether their job duties were consistent with Petitioner’s. (RX 3 pp. 32-33) He was unaware as to whether or not Petitioner was on the tactical team and did not know what duties and training were required for same. (RX 3 p. 40)

When asked if he was aware of the process with getting an inmate out of a cell in segregation, he indicated that prisoners would be escorted after handcuffing and that the doors were heavy; however, he did not discuss the unlocking process by which inmates are removed from their cells. (RX 3 pp. 35-36)

He agreed that each patient's threshold for developing carpal and cubital tunnel was different and that these conditions were cumulative and developed over time and that same were multifactorial. (RX 3 pp. 47-49) He did not believe that someone had to perform the same activity over and over for same to cause carpal or cubital tunnel. (RX 3 p. 56)

Regarding his opinion that Petitioner's symptoms should have improved after he became a sergeant if same were related to his job duties, Dr. Stewart was asked if there was a "point of no return" with moderate or severe compression neuropathy after which someone would not improve, to which he replied, "that in general I think is a very reasonable assessment." (RX 3 pp. 42-43)

He agreed that the doors Petitioner had to open were heavy and that they had locks that had to be manually opened and closed with a key. (RX 3 p. 36) He agreed pushing and pulling on heavy doors required considerable force, as did turning keys on heavy metal doors that did not function correctly but he did not feel that Petitioner's job activities required him to use his hands for grasping, twisting and handling. (RX 3 pp. 46-48) He agreed that being exposed to vibration could cause or aggravate carpal or cubital tunnel syndrome but felt that this depended on the amount of exposure to the activity. (RX 3 p. 38)

He did not feel that the position of a correctional officer was a hand intensive position because there was a greater period of recovery time than time spent performing the activity. (RX 3 pp. 45-46) He felt that Petitioner spent seven-and-a-half hours per day recovering by monitoring prisoners and walking around and making his presence known. (RX 3 p. 46) He felt that Petitioner's BMI and thyroid were contributory but completely excluded his entire work history as a causative factor. (RX 3 p. 53). He testified that in order for Petitioner's activities to be considered a risk factor, he would have to perform same for 50% or greater of his day. (RX 3 pp. 55-56)

When asked why so many people opined that the work activities of correctional officers are causative for development of carpal tunnel, he stated that just because something is held on a wide basis does not give it validity. (RX 3 pp. 59-60) Discussing correctional officers, he stated:

They do forceful things, yes. Do they do them on a more than once basis or repetitive, yes, but does it encompass a majority of their day, it does not. (RX 3 p. 56)

He testified that he has examined correctional officers from other facilities besides Menard, and when asked if he has ever found that the work activities of any correctional officer or sergeant were causative in the development of carpal or cubital tunnel syndrome, he stated:

Based on the job activities, if the job is similar, it would be irresponsible to pick and choose who you would say that this is related. The job and the specifics given about a correctional officer at Menard does not meet an adequate risk threshold for exacerbating or causing the compression neuropathies for which Mr. Brumleve was treated. (RX 3 pp. 56-57)

DEPOSITION OF DR. MATTHEW BRADLEY

Dr. Bradley testified via deposition on November 22, 2024. (PX 9) Dr. Bradley is board-certified orthopedic surgeon who treats carpal and cubital tunnel syndrome every day and performs surgeries regarding same every week. (PX 9 pp. 4-5)

On direct examination, he testified consistently with his medical records. He testified that as a correctional officer, Petitioner worked in the segregation unit which required pushing and pulling on heavy cell doors, opening up chuckholes, and utilizing different types of keys, including Folger Adams keys, up to 200 times per day, in addition to daily bar rapping. (PX 9 pp. 12-13) Dr. Bradley testified that he has treated close to 100 employees from Menard and has a very good understanding of their job descriptions. (PX 9 pp. 13-14)

With regard to causation, Dr. Bradley felt that use of Folger Adams keys and bar rapping were the most precipitating causative risk factors but opening and closing chuckholes and pulling on doors was also contributory. (PX 9 pp. 20-21) Dr. Bradley reviewed a video of tasks performed by a correctional officer at Menard and testified that the video shows an officer struggling to open a lock with a Folger Adams key. (PX 9 pp. 21-22)

Dr. Bradley testified that of all the patients he has seen from Menard, “not a single one of them has ever said that these doors are easy to open. In fact, it’s almost 180 degrees opposite. They all say these doors are difficult.” (PX 9 pp. 26-27)

Dr. Bradley acknowledged that Petitioner had obesity and thyroid issues which placed him at a higher risk for carpal tunnel; however, he stated that these conditions were multifactorial, and that Petitioner’s job duties at Menard was one of the factors that led to the development of his condition. (PX 9 p. 23) He explained:

The fact that this gentleman does have these conditions just means it's going to be a little bit easier for this gentleman to develop carpal or cubital tunnel, which basically means that he's not going to need to do many of these activities and have the force of these repetitive activities that an otherwise normal individual may have. And so I think the fact that he has the obesity and the thyroid issues just makes him, you know, more susceptible to that, and so I think it strengthens my causation that his work activities have in fact contributed. (PX 9 pp. 25-26)

He believed that Petitioner’s treatment, including surgery, was related to his job duties. (PX 9 pp. 23-24)

He disagreed with Dr. Stewart’s assessment regarding causation. (PX 9 pp. 24-25) When asked about Dr. Stewart’s opinion - that if Petitioner’s condition was related to his job duties, his symptoms would have improved rather than worsened over the prior year – Dr. Bradley disagreed and offered a more plausible interpretation, stating:

I disagree. In some individuals, when you quit doing the repetitive activities, the symptoms may very well improve or at least stabilize. In this gentleman's case, even though his utilization of his hands might have gone down a little bit, he was still utilizing his hands. He was still doing some of these activities. So the fact that his condition was so severe and he was still doing some repetitive use, I would not have expected his symptoms to improve just because he was using his hands slightly less. So I disagree with this statement of Dr. Stewart. (PX 9 pp. 24-25)

DOCUMENTARY EVIDENCE

A work history timeline completed by Petitioner indicated that he had worked as a yard laborer for two to three years, then worked as a laborer for six months. (PX 8) Following same, he was employed by Respondent as a correctional officer at Menard from March 2014 through April 2023 and then as a sergeant beginning in May 2023. *Id.* He escorted individuals in custody, turned keys, performed bar rapping, was a member of the tactical team, supervised officers, and individuals, fed individuals by opening food slots, then closed and opened the slots again to get trash and closed them again. *Id.*

A detailed job description for a correctional sergeant was completed by Petitioner wherein he indicated that he carried racks of trays as well as individuals in custody that refused to walk, albeit infrequently. (PX 8 p. 6) 10 to 100 times per day, he performed pushing/pulling of solid steel doors that weighed 80 to 100 pounds. *Id.* He reached above shoulder level to turn on lights and to bar rap. *Id.* He used large Folger Adams keys 10 to 120 times per day, opened padlocks 20 to 120 times per day, applied and removed handcuffs more than 20 times per day, and once per week, he applied handcuffs to combative individuals. (PX 8 p. 7) He performed handwriting approximately one hour or less per day. *Id.* Petitioner indicated that he performed bar rapping using a solid steel bar to test the integrity of bars on the cell by striking same with the bar in hand. *Id.* He stated that hundreds of bars were checked per day. *Id.*

An incident report dated March 27, 2024, indicated that on March 26, 2024, Petitioner had been working and developed carpal tunnel in his hands and elbows caused by his work duties. (RX 1, PX 10) A notice of injury completed by Petitioner indicated that he had repetitive use and trauma of his hands, wrists, elbows, and arms over 10 years as a correctional officer and sergeant and included his activities of using Folger Adams keys, bar rapping, pushing/pulling solid steel doors, and opening and closing chuck holes. *Id.*

Petitioner introduced into evidence a job site analysis for a correctional officer at Menard Correctional Center, which was prepared by Corvel at the request of Respondent. (PX 11) Same indicates that an officer's job duties require frequent lifting and/or carrying of up to 25 pounds and lifting up to 50 pounds, frequent pushing of carts, frequent pulling to open doors from 2 ½ hours to 5 ½ hours per day, up to 66% of the time, or up to 200 times per day. *Id.* This includes pulling open chuckhole doors as needed during lockdowns for dining, and cuffing and uncuffing residents.

Id. Wrist turning is required 34-66% of the time, 2 ½ to 5 hours per day, or 33 to 300 times per day. *Id.*

With respect to bar rapping, the report states that depending upon the number of bars in the area worked, the range of cells rapped is between 48-55 cells per gallery; however, with respect to bar rapping in the segregation unit, the report specifically states, "In segregation, if they are assigned to two galleries, they would rap between 55-110 cell doors at the beginning of the first and second shift." (PX 11, pp. 4- 5)

Regarding segregation, the report states that there are 55 cells on each gallery in segregation and that in the video, cell doors are in this area. It states that some galleries have open cells, and some have closed bar cells. It was noted that simulated bar rapping was illustrated in this area. *Id.*

Petitioner's Exhibit 13 is a thumb drive depicting the duties of a correctional officer at Menard Correctional Center. (PX 13) Bar rapping was simulated in the DVD and the officer explained that, depending upon the shift, all open bars will be rapped for security purposes. Officers are to listen to the sound to ensure that the bar is solid and that inmates have not tampered with the cell doors. The officer held the bar with his right hand and struck the bars approximately sixty times to demonstrate bar rapping on one cell (five to six bars vertically in twelve separate sections, each bar struck one time). Bar rapping is conducted on the 7-3 and 3-11 shifts. Officers perform bar rapping at the beginning of each shift on the gallery where they are assigned. There are 55 cells per gallery. While some galleries have half solid doors and half open bars, correctional officers will also be assigned more than one gallery per shift. *Id.*

The video also depicts various job tasks, assignments, areas, equipment, and mechanisms and features some demonstrations by a variety of correctional officers. Depictions included the armory, shakedown officer, bar rapping, double gate door, double gate walkway, opening cell doors, turning gallery cranks, receiving control house, control room, receiving door, shower door segregation, shower door, segregation unit, segregation door, chuckholes, double gate, and tower. Each area required opening and closing multiple doors and using multiple keys, mostly Folgers Adams keys. *Id.*

The correctional officers demonstrating these areas and job duties on the DVD used both hands to complete these tasks. In fact, when the videographer asked a Correctional Officer if he always turned keys with his left hand, the officer switched hands and stated, "You learn to use both hands in here because you need about four of them." On another occasion, when the videographer requested a correctional officer to demonstrate the unlocking maneuver in slow motion, the officer tried to do so and the lock stuck. He had to turn it multiple times to get it to work and explained that the locks were difficult to turn in slow motion. The DVD was stopped when a correctional officer struggled to open a cell door and yanked on it repeatedly with both hands. *Id.*

PETITIONER'S TESTIMONY - CONTINUED

Petitioner reviewed Dr. Stewart's report and felt that the percentages Dr. Stewart listed for his job duties were inaccurate. (Tr. pp. 18-19) He disagreed with Dr. Stewart, and that he felt that the job activities he performed did contribute to his carpal and cubital tunnel. *Id.*

When asked why he was placed in the segregation assignment for nine years, Petitioner testified "if you're good at your job and you don't complain about it, they keep putting you in there." (Tr. p. 32)

Petitioner is currently employed by the Illinois Department of Corrections at Vienna Correctional Center, where he transferred on July 1, 2024, because it saved him driving time. (Tr. pp. 11, 22) Petitioner had to give up his promotion in order to transfer and therefore no longer serves a sergeant. (Tr. pp. 12, 22)

Despite the improvement from his surgeries, Petitioner testified that his strength and grip is reduced, and that he experiences increased symptoms depending on his level of activity, and that his symptoms are more noticeable later in the day. (Tr. p. 20) He still experiences numbness and tingling in his left pinky down the side of the palm to his hand, and in his right thumb into his wrist. *Id.* He testified that several weeks prior to Arbitration, he saw his primary physician and reported that he was still having issues, it was recommended that he use diclofenac. (Tr. pp. 20-21) He uses same four times per day and sleeps with a wrist brace. (Tr. p. 21)

CONCLUSIONS OF LAW

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

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

The 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)

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis ours]. Even when other non-occupational factors contribute to the condition of

ill-being, “[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Fierke v. Indus. Comm’n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant’s condition. *Land & Lakes Co. v. Indus. Comm’n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm’n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm’n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm’n* noted that the purpose of the Illinois Workers’ Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee’s work. *Durand v. Indus. Comm’n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Commission has also recognized that a claimant’s employment may not be the only factor in his or her development of a condition of ill-being. The Commission awarded benefits in a case where the claimant was involved in martial arts activity outside of his employment (see *Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014)), and in another case where the claimant was involved in weightlifting outside of his employment. See *Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant’s condition of ill-being. *Fierke v. Indus. Comm’n*, 309 Ill.App.3d 1037; 723 N.E.2d 846, 849. The Court stated, “The fact that other incidents, whether work related or not, may have aggravated a claimant’s condition is irrelevant.” *Id.* at 723 N.E.2d 846, 849.

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define “repetitive trauma” the Commission has stated:

The term “repetitive trauma” should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the *variance in job duties* is not as important as the specific force, flexion and vibratory movements requisite in Petitioner’s job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). [emphasis ours]

A Petitioner’s job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers’ Comp. Comm’n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id.* “[I]n no way can quantitative proof be held as the sine qua non of a repetitive trauma case.” *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015).

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, that a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines*, *supra*.

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be time, duration, and "dosage") would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Id.*, at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "may" carry great weight "only where the work duty complained of is a common movement made by the general public." *Id.* at 1142.

The evidence demonstrates that Petitioner's duties as a correctional officer and sergeant required intensive, repetitive use of his hands and arms. He worked for Respondent for over 10 years almost exclusively in the segregation unit. (Tr. pp. 22-23) He testified at trial and noted on his job description that his duties included turning keys, opening and closing food slots/chuckholes, pushing/pulling steel doors weighing 80-100 pounds 10-100 times per day, opening padlocks, handwriting, using Folger Adams keys 10 to 120 times per day, bar rapping, cuffing and uncuffing inmates, and performing shakedowns and property box searches. (Tr. pp. 14-15, 30-31; PX 8) Petitioner testified and Dr. Bradley's notes indicated that Petitioner performed extensive bar rapping in segregation, and this is corroborated by the job analysis, which noted that in segregation, between 55 and 110 cell doors were bar rapped per shift. (PX 11; Tr. pp. 14-15, 25-26; PX 3) Petitioner testified that his job duties were performed at almost the same rates as set forth in Respondent's job analysis, which indicated that officers frequently lift/carry/push/pull up to 66% of their day, and that 34-66% of their day (2 ½ to 5 hours) was spent turning their wrists. (PX 11; Tr. pp. 14-15) The Arbitrator notes that the activities performed by Petitioner are particular to his employment at a correctional institution, and his duties involve tasks which are distinctly

related to his employment with Respondent. The majority of his activities are not ones performed by the general public, let alone activities to which the public would ever be exposed. Therefore, the Arbitrator finds that Petitioner's duties are sufficient to establish repetitive trauma.

As to the expert opinions offered in this case, the law holds that expert testimony shall be weight like other evidence with its weight determined by the character, capacity, skill, and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 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). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

The Arbitrator has considered the opinions of Dr. Bradley and Dr. Stewart and finds the opinions of Dr. Bradley more persuasive than those of Dr. Stewart. To this, the Arbitrator notes Dr. Stewart believed that it was "not accurate" that bar rapping was a significant part of Petitioner's job because the segregation doors were solid; however, Respondent's own job analysis noted that there are actually more cells that are rapped in segregation (55-110) than on the regular gallery (48-55), which corroborates Petitioner's testimony that he performed a significant amount of bar rapping, as the solid doors in segregation had an extra layer of bars on the outside. (Tr. pp. 25-26; RX 2; PX 11)

Further, Dr. Stewart did not believe that Petitioner had to use his hands for grasping, twisting, handling, and that there was "no indication" that the chuckholes, padlocks, or deadlocks were problematic; however, the opposite is demonstrated in the DVD, as the officers had great difficulty attempting to unlock/open same and used their hands during their attempts. (RX 2; PX 13; RX 3, pp. 46-47) Petitioner's credible testimony as well as Respondent's own job analysis and DVD paint a vastly different picture of the duties of a correctional officer than Dr. Stewart imagined, as he felt that officers had seven-and-a-half hours per day to recover and simply walk around, making their presence known. (RX 3, pp. 45-46) Dr. Stewart, however, had never seen the DVD or the job analysis. (RX 3, pp. 31-34) Therefore, Dr. Stewart's knowledge of Petitioner's duties appears to be inadequate, at best.

In contrast, Dr. Bradley has treated around 100 patients from Menard and is very familiar with the duties of correctional officers and sergeants. (PX 9, pp. 13-14) In addition, he reviewed the video depicting the job duties performed by an officer at Menard. (PX 9 pp. 21-22) He was

also aware that Petitioner performed a significant amount of bar rapping, and that the locks at the facility are difficult and problematic. (PX 9 pp. 20-21, 26-27). Therefore, the Arbitrator finds that Dr. Bradley has a more extensive knowledge of the job duties of employees at Menard, including Petitioner.

The Arbitrator does not find Dr. Stewart's opinion – that Petitioner's symptoms should have decreased instead of worsened after he became a sergeant if his duties were causative – to be persuasive or congruent with the medical evidence, as Petitioner had only been a sergeant for one year at the time his diagnostic studies showed that his condition was already severe. (PX 4; RX 2) Dr. Bradley reasoned that although Petitioner's duties decreased to a degree after becoming a sergeant, he was still engaging in the activities on top of his severe condition, and therefore, it was not a reasonable expectation that his symptoms should have decreased. (PX 9, pp. 24-25) Consequently, the Arbitrator finds Dr. Bradley's opinion in this regard to be more logical and harmonious with the evidence.

The Arbitrator further notes Dr. Stewart's opinion that Petitioner's BMI and thyroid were the cause of his condition and that he completely discounted Petitioner's entire work history as causative. (RX 2; RX 3, pp. 53, 55- 56) The Arbitrator finds Dr. Stewart's opinion to be speculative and unpersuasive, as Petitioner demonstrated that his duties are hand-intensive and repetitive. The Arbitrator therefore adopts the more persuasive opinion of Dr. Bradley, namely, that while Petitioner's comorbidities were a factor, his job duties were also a factor in the development of his condition, and that Petitioner's comorbidities lowered his threshold for injury. (PX 9 pp. 23, 25-26)

The Arbitrator notes that although Dr. Stewart disagreed on the dosage necessary for causation, he admitted that Petitioner's activities were forceful and repetitive. (RX 3, pp. 56) The evidence demonstrates that Petitioner spent the majority of his 10 years at Menard as a correctional officer working in the segregation unit, and that the numerous hand and arm intensive, repetitive job duties he performed during that time were a causative factor in the development of his compression neuropathy. Therefore, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment, and that his condition of ill-being is causally related to his work activities.

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

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

(2001).

The evidence shows that Petitioner had objective diagnostic findings for carpal and cubital tunnel on his EMG and nerve conduction study, and his findings were confirmed intraoperatively. (PX 3; PX 4) Therefore, pursuant to the above findings on causation, the Arbitrator finds that the medical services rendered to Petitioner were reasonable, necessary and causally related to his work activities. Further, the Arbitrator finds that Respondent is liable for payment of medical expenses as outlined in Petitioner's Exhibit 1.

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

Respondent disputed liability for temporary total disability benefits. (T. 5, 6; AX1) Pursuant to the above findings regarding accident and causation, the Arbitrator hereby awards temporary total disability benefits for the undisputed duration of 1 2/7 weeks for Petitioner's period of disability from April 13, 2024, through April 17, 2024, and from May 22, 2024 through May 27, 2024.

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

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

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

(ii) **Occupation:** Petitioner continues in his employment for Respondent and has transferred to Respondent's Vienna Correctional Center facility. (Tr. pp. 11, 22) The Arbitrator places little weight on this factor.

(iii) **Age:** Petitioner was 35 years of age at the time of his injury. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity:** While there is no direct evidence of reduced earning capacity contained in the record; based on the severity of Petitioner's injuries, the requisite treatment and

the resulting disability, it is reasonable to conclude that such repercussions will manifest in the near future. The Arbitrator places little weight on this factor.

(v) **Disability:** As a result of his work duties, Petitioner developed bilateral carpal and cubital tunnel syndrome which required surgical intervention in the form of bilateral open carpal and open cubital tunnel releases with ulnar nerve transpositions. (PX 3; PX 6) Despite the improvement gained from his surgeries, Petitioner still experiences symptoms dependent on his level of activity, including reduced grip and strength. (Tr. p. 20) He still experiences numbness and tingling in his left pinky down into his hand as well as in his right thumb into his wrist. *Id.* Petitioner has consulted with his primary physician concerning his ongoing symptoms, and it was recommended that he use diclofenac, which he currently uses four times per day. (Tr. pp. 20-21) He testified that he also sleeps with a wrist brace. (Tr. pp. 20-21) Petitioner's testimony is corroborated by the medical records, as Dr. Bradley initially indicated that Petitioner's condition was so severe that he was at high risk for permanent nerve damage. (PX 3 p. 4) At his last visit with Dr. Bradley, Petitioner reported that he still had residual symptoms of tingling. (PX 3 p. 24) The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 15% loss of Petitioner's right arm, the 15% loss of Petitioner's left arm, the 12.5% loss of Petitioner's right hand, and the 10% loss of Petitioner's left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC011039
Case Name	April Brown v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0021
Number of Pages of Decision	26
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mary Massa, Nathan Becker
Respondent Attorney	Nicole Werner

DATE FILED: 1/26/2026

/s/ Marc Parker, Commissioner

Signature

24 WC 011039

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

April Brown,

Petitioner,

vs.

NO: 24 WC 011039

State of Illinois/Pinckneyville
 Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 3, 2025, is hereby affirmed and adopted.

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

24 WC 011039

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

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

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

January 26, 2026

MP:yl

o 1/15/26

68

/s/ Marc Parker

Marc Parker

/s/ Maria E. Portela

Maria E. Portela

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC011039
Case Name	April Brown v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Nicole Werner

DATE FILED: 7/3/2025

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



JULY 3, 2025

/s/ Bradley Gillespie, Arbitrator
Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF JULY 1 2025 4.11%

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)

April Brown
 Employee/Petitioner

Case # **24** WC **11039**

v. Consolidated cases:

Pinckneyville Correctional Center
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gilliespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **5/16/25**. 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, **3/13/2024**, 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 **\$91,225.91**; the average weekly wage was **\$1,754.34**.

On the date of accident, Petitioner was **47** 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 **\$any amount paid** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$.

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

ORDER***ACCIDENT:***

The Arbitrator finds Petitioner sustained accidental injuries that arose out of and in the course of her employment, on March 13, 2024.

CAUSATION:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to her work accident of March 13, 2024.

Medical benefits:

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay the medical providers directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: 1) Cedar Court Imaging: \$3,430.00; 2) Orthopaedic Center of Southern Illinois: \$830.00; 3) Pinckneyville Community Hospital: \$14,850.00; 4) Town and Country Crossing Orthopedics: \$857.00; and 5) Interventional Pain Consultants, LLC: \$6,654.00. The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act of ANY AMOUNT PAID.

Prospective Medical:

The Arbitrator finds that Petitioner is entitled to prospective medical and Respondent shall pay for the surgical recommendations outlined by Dr. Brett Taylor.

Temporary Total Disability:

Respondent shall pay Petitioner temporary total disability benefits of \$1,169.56/week for 58 and 6/7 weeks, commencing March 31, 2024 through May 16, 2025, as provided in *Section 8(b) of the Act*.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator

JULY 3, 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

APRIL BROWN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case # 24 WC 11039
	)	
STATE OF ILLINOIS/PINCKNEYVILLE	)	
CORRECTIONAL CENTER,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

On or about April 23, 2024, April Brown, [hereinafter “Petitioner”] filed an Application for Adjustment of Claim alleging an accidental injury arising out of and in the course of her employment with the State of Illinois/Pinckneyville Correctional Center [hereinafter “Respondent”]. (Arb. Ex. 2) According to the Application, Petitioner sustained injuries to her left upper extremity and body as a whole. *Id.*

This claim came before Arbitrator Bradley Gillespie for trial in Collinsville on May 16, 2025, pursuant to Section 19(b) of the Act. (*See* Arb. Ex. 1) The issues in dispute are as follows:

- Accident;
- Causal connection;
- Medical bills;
- Temporary Total Disability;
- Prospective Medical Treatment; and
- Prospective Medical Bills.

FINDINGS OF FACT**April Brown – Petitioner**

Petitioner testified that she is a Sergeant at Pinckneyville Correctional Center. (Tr. p. 9) She has worked for the Illinois Department of Corrections since August of 2001. (Tr. p. 10) Petitioner testified that on March 13, 2024, she was working the midnight shift and Ramadan had just begun, which means Muslim inmates can only eat while the sun is down. *Id.* Therefore, the inmates participating in Ramadan were fed in their cells between 2:00 and 3:00 a.m. *Id.* Petitioner was the only correctional officer on the floor at that time. *Id.* It was her responsibility to deliver the food and beverages to the individual cells. (Tr. p. 10) To do this, she carried milk and juice in a milk crate. *Id.* When carrying the milk crate, she held it in her left hand and let it hang down by her side. *Id.* When she got to a cell, she used her right hand to unlock the access hole in the cell door, called a “chuckhole”, and then she grabbed a beverage with her right hand

and placed it in the chuckhole. *Id.* When she reached into the milk crate, she would slightly lift the milk crate with her left arm; she raised it from knee level to her hip. (Tr. pp. 11-12) Petitioner testifies that the milk crate weighed approximately 25 pounds when full. (Tr. p. 11) Due to the time limits, Petitioner testified that handing out food and drinks was a fast-paced job. (Tr. p. 12)

Petitioner testified that as she was passing out the inmates' beverages, she started to feel pain going down the left side of her neck and her left shoulder. (Tr. p. 12) Petitioner testified the pain was radiating down her neck all the way to the middle of her forearm. (Tr. pp. 12-13) Petitioner testified that she had not experienced those symptoms prior to carrying the milk crate full of beverages, on March 13, 2024. (Tr. p. 13)

She did not report her symptoms on that day because she assumed it was a strain. (Tr. p. 13). Petitioner was scheduled to work the next two shifts, on March 13th and 14th, however, she called off because she was still experiencing symptoms. She testified that she called off to give her body a break to see if it was just a muscle strain. (Tr. pp. 13-14) Petitioner did not work on March 15th or 16th, because those were her regular days off. (Tr. p. 14) Petitioner testified that her symptoms "eased up" a little while she was off but did not go away. *Id.*

She returned to work on March 17, 2024, and continued to serve food and drinks to the Muslim inmates in their cells. Also, on March 17, 2024, the whole prison was on a level 1 lockdown, therefore, every inmate had to be fed in their cells. (Tr. pp. 14-15) Petitioner testified that she used the same left-handed technique to carry the milk crates on March 17th and thereafter. (Tr. p. 15) As she continued to carry the milk crate and pass out beverages, Petitioner testified that her symptoms worsened. *Id.* Petitioner called off on March 31, 2024, and reported the injury to Human Resources on April 1, 2024. *Id.* Petitioner testified that she reported the injury, on April 1, 2024, because she could no longer lift her left arm and her neck was very painful, and because her symptoms had not gone away despite her attempts to rest. (Tr. pp. 15-16)

Petitioner testified that prior to her work injury, she typically worked between 8 and 16 hours of overtime a week. (Tr. p. 16) Petitioner testified that she had two prior low back surgeries; an L4-S1 fusion, done April of 2009, and a fusion from L3-S1, done June of 2011. *Id.* She has been taking Norco 5/325 for her back pain since 2008. (Tr. p. 17) She was taking Norco on March 13, 2024, and continued to take Norco at the time of trial. *Id.* Petitioner testified that in 2013 she underwent a C5-C7 cervical discectomy and fusion. *Id.* She completed treatment for that surgery in May of 2014 and returned to work as Correctional Officer. (Tr. p. 18) She testified that her neck was great following the 2013 cervical surgery. *Id.* She did not seek medical treatment for her neck between 2014 and March of 2024. *Id.* Prior to March 13, 2024, neither her back nor her neck prevented her from working 8 to 16 hours of overtime a week. *Id.*

After reporting the injury, Petitioner testified she first sought treatment with Angie Eubank, PA, at Pinckneyville Community Hospital. (Tr. p. 19) The work comp nurse from Gallagher Bassett told her to go there. *Id.* She did not go to her primary care doctor, because he does not take workers' compensation cases. *Id.* PA Eubanks ordered x-rays of left shoulder and cervical spine, ordered physical therapy, and held Petitioner off work. *Id.* Petitioner participated

in physical therapy for two and a half months. (Tr. p. 19) Physical therapy was discontinued because it was making her symptoms worse. (Tr. pp. 19-20)

Petitioner testified that, on May 15, 2024, she saw Dr. Brett Taylor for her cervical spine. (Tr. p. 20) Dr. Taylor recommended additional testing and an evaluation by a shoulder doctor. *Id.* Dr. Taylor wanted Petitioner's shoulder evaluated to see if her pain was also coming from her left shoulder. *Id.* On July 16, 2024, Petitioner had a cervical MRI. *Id.* On August 1, 2024, Petitioner saw Dr. Taylor who recommended additional testing, a shoulder evaluation and referred Petitioner to pain management for her neck (Tr. p. 20)

Petitioner testified that she treated with Dr. Wynndel Buenger for pain management. Petitioner underwent an ESI at C4-5, on September 12, 2024, Bilateral facet injections at C3-4 and C4-5, on November 19, 2024, and an ESI at C5-6, on December 18, 2024. (Tr. pp. 20-21) Petitioner testified the injections helped with her ability to turn her head but did not help with her pain. (Tr. p. 21)

Petitioner testified that she saw PA Haertling on August 9, 2024, for a left shoulder evaluation. PA Haertling ordered an MRI and gave her a steroid shot in her left shoulder. (Tr. p. 21)

Petitioner underwent the left shoulder MRI on August 19, 2024, and was thereafter referred to Dr. Ahn for a surgical consultation. (Tr. p. 21) Petitioner saw Dr. Ahn on September 25, 2024. *Id.* Petitioner testified that Dr. Ahn is not recommending additional shoulder treatment. *Id.* After speaking to Dr. Ahn, Petitioner was told her symptoms are most likely coming from her neck. *Id.* Petitioner testified that she is not asking the Court to order prospective shoulder treatment. (Tr. p. 21-22)

Petitioner testified that she did not tell IME-Dr. Bernardi that she was having right sided neck pain. (Tr. p. 22) She testified that right sided neck pain has never been a major issue. *Id.*

Petitioner testified that her current symptoms consist of stabbing pain that goes from her neck down her shoulder and into her left forearm. (Tr. p. 22) Petitioner testified that her symptoms since March 13, 2024, through trial have only gotten worse. (Tr. p. 23)

Petitioner testified that she last saw Dr. Taylor on May 8, 2025. Dr. Taylor recommended a hybrid surgery to include removal of the prior fusion hardware and a combination of disc replacement and fusion from C3 through C7-T1. (Tr. p. 23) Petitioner testified that she wants to have that surgery. *Id.*

Petitioner testified that she has been held off work by her medical providers since April 2, 2024. (Tr. p. 23) Petitioner testified that since March 13, 2024, her neck and left upper extremity symptoms have not gone away. (Tr. pp. 23-24)

Medical Records**Pinckneyville Community Hospital:**

Petitioner first sought medical treatment on April 2, 2024, with Angie Eubanks, PA-C, at Pinckneyville Community Hospital. The history of present illness stated: “[Petitioner] states a couple weeks ago she was carrying milk crates up and down the stairs several times and trying to pass stuff out to inmates with her right hand bearing the weight with her left arm and now she complains of left shoulder discomfort as well as neck discomfort.” (PX 6 p. 4) Petitioner’s prior cervical and lumbar fusions were noted. Her physical examination revealed pain with cervical range of motion/cervical tenderness and left shoulder joint tenderness. *Id.* The “Assessment & Pain” stated: “Neck pain: acute, and left shoulder pain: acute. Will order x-ray C-spine and left shoulder. Advised to use ice and moist heat. Patient has pain medication to take as advised from her PCP. She may alternate with ibuprofen as directed. Off work for one week until X-ray results are obtained and reevaluated in one week.” (PX 6 p. 5) X-rays of the cervical spine and the left shoulder were performed on April 2, 2024. (PX 6 p. 2)

On April 9, 2024, Petitioner returned to see PA Eubanks. She continued to complain of left shoulder and neck pain. Petitioner asked for a referral to an orthopedic doctor. (PX 6 p. 12) Petitioner was given a referral to Dr. David Kennedy, her former orthopedic surgeon, and was held off work until she was seen by an orthopedic doctor. (PX 6 p. 13)

On May 14, 2024, Petitioner returned to see PA Eubanks. She complained of persistent neck pain and left shoulder pain, mostly in her neck. Petitioner reported that imaging was denied until she completed physical therapy. She was also scheduled to see an orthopedic doctor in Saint Louis, on May 15, 2024. She was held off work. (PX 6 at 14)

At the direction of PA Eubanks, Petitioner underwent a CT of the left shoulder, which revealed “mild left acromioclavicular and minimal glenohumeral joint osteoarthritis.” (PX 6 p. 19)

Petitioner started physical therapy for her cervical spine and left shoulder pain at Pinckneyville Community Hospital, on May 3, 2024. The history of current complaint given to physical therapy was:

[Petitioner] states she was at work carrying crates of milk, juice, etc. Reports over time the pain has gradually gotten worse and to the point where she can't move her neck or lift her arm... reports increased pain with any movement, such as brushing her hair or doing anything that involves turning her neck or using arms. Reports she also gets a stabbing pain in the center of her back between the shoulder blades. Patient is right-handed. Patient denies any numbness or tingling down [arms], just describes shooting pain, reports majority of the pain was down the left, but now it is starting to affect the right as well... (PX 6 at 22)

Petitioner reported her pain was 5 out of 10 at that visit, a 3 out of 10 at best, and as bad as 8-9 out of 10 with activity. (PX 6 at 23)

On June 5, 2024, Petitioner once again saw PA Eubanks. She had attended approximately 7 physical therapy visits. Petitioner felt the physical therapy may have been helping her left shoulder. However, her main complaint was neck pain that radiated into her left arm. She had obtained a CT of the left shoulder which revealed some osteoarthritis, but no definitive rotator cuff tear. A request for a cervical MRI was denied by insurance until physical therapy was completed. She was held off work and physical therapy was continued. (PX 6 p. 55)

On July 7, 2024, Petitioner once again saw PA Eubanks. She had completed 10 physical therapy sessions and seven more were approved. Additionally, the cervical MRI had been authorized. Once the cervical MRI was completed, she wanted to be referred to Dr. Brett Taylor, in St. Louis. PA Eubanks noted that the physical therapy notes documented slight improvement with left shoulder pain but continued neck discomfort, which was consistent with Petitioner's reported progress. (PX 6 p. 82) She was held off work and physical therapy was approved. After the MRI was completed, she was to be referred to Dr. Taylor. (PX 6 p. 86)

Petitioner underwent an MRI of the cervical spine on July 16, 2024. The radiologist's impression was "there are post-surgical changes with anterior spinal fixation C5-C7. Mild posterior bulging of the C2-C3 disc with mild encroachment upon the ventral thecal sac. 4mm posterior central protrusion of the C3-C4 disc with moderate encroachment upon the ventral thecal sac. 4mm posterior central protrusion of the C4-C5 disc with moderate encroachment upon the ventral thecal sac. (PX 2 p. 3)

Dr. Brett Taylor:

Petitioner first saw Dr. Brett Taylor on May 15, 2024. The History of Present Illness stated:

This 48-year-old right-handed Sergeant presents with a complex history. Of note, her history is notable for prior C5-7 ACDF performed in 2013 by Dr. David Kennedy. She describes a March 2024 injury while working at Pinckneyville Correctional Center. Ms. Brown states during Ramadan [3/10/2024 – 4/9/2024], she is required to go around and deliver milk and juice to the inmates at their cell. She described an injury on 3/1[3]/2024 where she injured her left arm carrying crates of beverages. She holds the crate with her left arm and passes the beverages out with her right hand, and after finishing the task she experienced left shoulder and neck pain. She called off work on 3/13 and 3/14 and returned to work on the 15th. She continued working the next 2 weeks with increasing left shoulder and neck pain, and she was evaluated by a workers' compensation provider on 4/2/24. Since the accident, she has been utilizing hydrocodone prescribed by her primary care provider, as well as ibuprofen infrequently. Of note, Ms. Brown underwent an L4-S1 lumbar fusion in April 2009 as well as an extension of the fusion L3-S1 in 2011 performed by Dr. Fonn. She is currently taking hydrocodone 3-5 times a day for chronic pain of her lumbar spine. She informs me that the hydrocodone is provided by her primary care provider, Jeff Sherill, PA-C. (PX 1 p. 1)

Petitioner reported 50% neck pain and 50% arm pain. 100% of the arm pain was left sided. Pain was present in the left upper back, shoulder, upper arm, and forearm. Raising her arm and moving her neck worsened the pain. She had weakness in the left upper extremity and forearm. Petitioner denied numbness in her hands and arms. She did have frequent headaches in the back of her head. *Id.*

Petitioner reported that her pain level was 7 out of 10. Her neck pain intensity was 8 out of 10, and her neck pain frequency was 10 out of 10. Her arm pain intensity was 8 out of 10, and her arm pain frequency was 10 out of 10. (PX 1 p. 2) Dr. Taylor performed a physical examination and reviewed the April 2, 2024, left shoulder and cervical x-rays. Dr. Taylor also reviewed the Pinckneyville Community Hospital records and physical therapy notes. (PX 1 p. 4) At that visit, Petitioner's diagnoses were: "1) status post C5-7 ACDF; 2) Adjacent segment disease, C4-5; a) clinical cervical radiculopathy left C4-5; 3) pre-existing cervical congenital stenosis; 4) pre-existing cervical degenerative disc disease; 5) rule out intrinsic left shoulder pathology." (PX 1 p. 5)

Regarding causation, Dr. Taylor stated: "Based on a reasonable degree of medical certainty, the work exposure in March 2024 resulted in her current symptomatic state of her cervical spine. Her work exposure permanently aggravated her cervical spine resulting in adjacent segment disease with clinical cervical radiculopathy left C4-5." (PX 1 p. 6)

Under "Plan", Dr. Taylor stated: "Ms. Brown presents with adjacent segment disease with new onset of cervical radiculopathy following the March 2024 work accident. Ms. Brown requires additional diagnostic testing to further evaluate her condition. This includes full series cervical radiographs calibrated for magnification to rule out segmental instability, a 3T cervical spine MRI with foraminal views, as well as a cervical spine CT myelogram." (PX 1 p. 6)

Petitioner once again saw Dr. Taylor on August 1, 2024. Petitioner had obtained an MRI of her cervical spine. Additionally, she reported that her symptoms of neck and left upper extremity pain were increasing in severity. She had not yet seen a shoulder specialist. Dr. Taylor reviewed the July 16, 2024, cervical MRI, which revealed a disc herniation at C3-4, a large central and left sided disc herniation at C4-5, and disc pathology at C3-5 which was causing critical stenosis. He noted that the space available in her spinal cord was less than 10mm between C3-5 which was diagnostic for critical cervical stenosis. (PX 1 p. 9)

On August 1, 2024, regarding causation, Dr. Taylor documented: "Based on a reasonable degree of medical certainty, the work exposure in March 2024 resulted in her current symptomatic state of her cervical spine. Her work exposure permanently aggravated her cervical spine resulting in adjacent segment disease with clinical cervical radiculopathy left C3-5." (PX 1 p. 10)

Under "Plan", Dr. Taylor stated: "she has clear evidence of critical cervical stenosis C3-C5 with clinical radiculopathy. She is a candidate for anterior cervical fusion revision." (PX 1 p.

10) She needed additional diagnostic workup before proceeding with surgery. In the interim Dr. Taylor referred Petitioner to Dr. Buenger for nonoperative pain management. *Id.*

On August 27, 2024, Petitioner returned to Dr. Taylor's office complaining of increased neck and left shoulder pain. She had been seen by a shoulder specialist, who performed an injection, which did not help. Dr. Buenger was waiting for health insurance approval before they could move forward with cervical injections. (PX 1 p. 14) Dr. Taylor recommended Dr. Buenger perform C3-4 and C4-5 facet injections to rule out facet pain. (PX 1 p. 16)

On October 22, 2024, Petitioner once again saw Dr. Taylor. Petitioner had undergone a C4-5 ESI, which did not help relieve her pain. She reported her symptoms were unchanged from her previous visits. She had obtained a left shoulder MRI and was told that she had a tear which would heal itself and did not need surgical intervention. Petitioner was told that her cervical condition was likely contributing to her shoulder pain. Additionally, she had undergone a cervical CT myelogram and cervical spine radiographs on October 17, 2024. (PX 1 p. 17) Dr. Taylor reviewed the October 17, 2024, cervical spine radiographs which revealed prior instrumented fusion C5-7, decreased disc height, and cervical congenital stenosis. Dr. Taylor also reviewed the October 17, 2024, cervical spine CT myelogram, which revealed solid fusion C5-7 with bridging of anterior and posterior endplates, clinical stenosis space available for cord less than 10mm at C3-4 and C4-5, and foraminal stenosis C3-5 due to mild facet arthropathy with disc bulging. (PX 1 p. 18) Petitioner was instructed to follow up with Dr. Buenger for additional injections. However, Dr. Taylor predicted that she would fail non-operative treatment and should return upon completion of that treatment to discuss surgery. (PX 1 p. 19)

Prior to trial, Petitioner last saw Dr. Taylor on May 8, 2025. Dr. Taylor noted she had undergone a C4-5 ESI, C5-6 ESI, and bilateral C3-4 and C4-5 facet injections, all of which provided no lasting clinical benefit. Petitioner continued to complain of pain in her neck and left shoulder/arm. Because Petitioner reported no benefit from the bilateral facet injections, she was not a candidate for an RFA. Petitioner reported that she was not satisfied with her symptomatic cervical condition and wished to proceed with surgery. Dr. Taylor reviewed cervical spine x-rays, dated May 8, 2025, which revealed prior instrumented anterior cervical fusion C5-7, and adjacent segment disease at C3-5 and C7-T1.

Regarding causation, Dr. Taylor documented: "Based on a reasonable degree of medical certainty, the work exposure in March 2024 resulted in her current symptomatic state of her cervical spine. Her work exposure permanently aggravated her cervical spine resulting in adjacent segment disease with clinical cervical radiculopathy left C3-5>C7/T1" (PX 1 p. 23)

Under "Plan" Dr. Taylor stated:

This individual presents with adjacent segment disease proximal and distal to her prior cervical fusion. She is a candidate for surgery in the form of revision anterior cervical hybrid surgery combining disc replacement and fusion. Prior to

surgery, she requires ENT evaluation to assess vocal cord asymmetry which will determine the side of approach. We will review her prior op note outlining the hardware to facilitate removal of the prior cervical plate and screws. The surgical procedure required is an anterior cervical hardware removal to expose fusion and disc replacement and/or fusion C3-C5/C7/T1. We would combine disc replacement and fusion performing a hybrid procedure. Prior to surgery, she will require preadmission testing visit to ensure that her medical condition is optimized prior to surgery. Workers' Compensation has not authorized surgical treatment, we will see her back via telehealth at the end of the month to better assess progression of her symptomatic condition.” (PX 1 p. 23)

Dr. Taylor also noted that he may not be able to access the C7-T1 level anteriorly, and Petitioner may require a delayed staged posterior surgery to access that level. (PX 1 p. 24)

Dr. Wynndel Buenger:

Petitioner saw Dr. Wynndel Buenger's FNP-C, Lorilee Sebesta, on September 4, 2024. Her chief complaint was neck pain. The documented diagnoses were 1) cervical radicular pain; 2) disc disorder of cervical region; and 3) other chronic pain. A C4-5 ESI was recommended. (PX 3 p. 2) On September 12, 2024, Petitioner underwent the C4-5 ESI, which was performed by Dr. Buenger. (PX 1 p. 8)

Petitioner returned to see FNP-C Sebesta on September 26, 2024. She reported no benefit from the C4-5 ESI. (PX 1 p. 11)

On November 19, 2024, Petitioner underwent bilateral facet injections at C3-4 and C4-5, performed by Dr. Buenger. (PX 1 p. 18)

Petitioner returned to see FNP-C Sebesta on December 9, 2024. She reported no benefit from the bilateral facet injections at C3-4 and C4-5. A C5-6 ESI was recommended. (PX 1 p. 21)

On December 18, 2024, Petitioner underwent the C5-6 ESI, which was performed by Dr. Buenger. (PX 1 p. 28)

Petitioner last saw FNP-C Sebesta on January 13, 2025. She reported no benefit from the C5-6 ESI. (PX 1 p. 30) The use of a spinal cord stimulator was discussed. Petitioner's plan was to follow up with Dr. Taylor.

Devin Haertling, PA-C:

Petitioner presented to Devin Haertling, PA-C with complaints of left shoulder pain, on August 9, 2024. It was noted that she was being worked up for a cervical spine problem and that her neurosurgeon wanted her left shoulder evaluated as well. She rated her pain as 4 out of 10.

Her pain was described as aching and stabbing. Petitioner had undergone physical therapy for 3-4 weeks, which made her pain worse. She was assessed to have a left shoulder rotator cuff tendinitis and impingement. PA-C Haertling documented that he believed that she did have some degree of pain coming from her left shoulder. However, he did not think she would have a large rotator cuff tear as she had adequate strength. She was given a cortisone injection into the left shoulder at that appointment. If she had not improved in 3-4 weeks he would recommend an MRI. (PX 1 p. 1)

On August 19, 2024, PA-C Haertling ordered an MRI of the left shoulder.

Petitioner returned to PA-C Haertling on September 9, 2024, to discuss the MRI results. She reported not doing well after the August 9, 2024, left shoulder steroid injection. She had post injection side effects which included stomach bloating, cramping and severe diarrhea. The MRI performed at Cedar Court Imaging on September 9, 2024, was of poor quality. PA-C Haertling opined that it showed signs of impingement with rotator cuff tendonitis. He noted that he believes the radiologist's impression that she had a partial rotator cuff tear was an "overread". Additionally, the radiologist documented a labral tear which PA-C Haertling did not see on the scan. PA-C Haertling offered a repeat injection, however, due to the bad side effects with the previous injection, she did not wish to undergo additional injections. Therefore, she was referred to Dr. Ahn, in Mount Vernon. (PX 5 p. 3)

Dr. Joon Ahn:

Petitioner saw Dr. Joon Ahn, on September 25, 2024. Dr. Ahn documented her ongoing cervical issue and reviewed the left shoulder MRI. Dr. Ahn disagreed with the radiologist reading of the MRI. He felt she had some minimal signal changes at the intersection site of the supraspinatus tendon, but not a partial tear. There was no indication for shoulder surgery. It was noted that the shoulder was being evaluated to determine if the shoulder was the main pain generator. Dr. Ahn's clinical impression was "left shoulder rotator cuff tendinopathy/small interstitial tear of the supraspinatus tear comprising less than 20% of the fibers." (PX 1 p. 2) Dr. Ahn stated that he did believe that she had some inflammatory component to her shoulder but given her neck issues her symptoms could be referred from the neck. He recommended that she focus her treatment on the cervical and return to his office if the cervical treatment did not resolve her shoulder pain. (PX 1 p. 3)

Deposition Testimony of Dr. Brett Taylor:

Dr. Taylor testified that he was paid \$750, by Petitioner's attorney, to examine Petitioner, review relevant medical records and diagnostic tests, and thereafter create a report outlining his findings and his and opinions on the causal relationship between Petitioner's current condition and her work activities at Pinckneyville Correctional Center. (PX 8 pp. 6-7)

Dr. Taylor testified that the history of present illness provided to him was: “She said she’s a 48-year-old right-handed Sergeant who was working at Pinckneyville Correctional Center and during Ramadan she goes around and delivers milk and juice to the inmates. She describes the activity as carrying crates of beverages. She holds the crate with her left arm and passes the beverages out with her right hand, and after finishing that task, she had experienced left shoulder and neck pain. She called off work on 3/13 and 3/14, returned to work on the 15th, continued to work the next two weeks with increased left shoulder and neck pain.” (PX 8 pp. 8-9)

With regards to 1) Petitioner’s prior medical history, 2) his physical examination findings, and 3) the radiographs and medical records he reviewed, Dr. Taylor testified consistent with his medical records. (PX 8 pp. 9-11)

Dr Taylor testified that Petitioner’s diagnosis, on her first visit, was status post C5-7 ACDF, adjacent segment disease with radiculopathy, preexisting congenital cervical stenosis, and preexisting cervical degenerative disc disease. (PX 8 p. 11) Dr. Taylor testified that he recommended additional diagnostic testing, to include a full series of cervical radiographs with calibration for magnification, a cervical MRI with foraminal views, as well as cervical spine CT myelogram, and a left shoulder evaluation by a shoulder specialist. (PX 8 p. 12)

In the deposition, Dr. Taylor explained the difference between adjacent segment degeneration and adjacent segment disease. Adjacent segment degeneration is simply a finding of degeneration on diagnostic imaging, in the setting of a patient without symptoms. When a patient begins to experience symptoms from that adjacent segment they have adjacent segment disease. Adjacent segment disease does not typically do well non-operatively and often require surgery. (PX 8 pp. 12-13)

Dr. Taylor testified that Petitioner returned to his office on August 1, 2024, complaining of worsening symptoms. Petitioner’s examination at that visit had changed since the prior visit. Now her motor function at C5 on both the left and the right had a grade of weakness; she was 4/5. She was also having light touch decreased to sensation, bilaterally at the C5 dermatome. Additionally, she now had a positive Spurling’s test on the left. At the May 5, 2024, office visit, Petitioner’s Spurling test was equivocal, which is abnormal, but it was not a definitive positive. (PX 8 p. 14) Therefore, Dr. Taylor testified that this showed that Petitioner was having a progression of her clinical findings with increased weakness at C5, sensory changes at C5, and positive left Spurling’s. Taken together, this showed that her condition was objectively worsening clinically. *Id.* Dr. Taylor testified that, in the setting of adjacent segment disease, it is reasonably foreseeable that asymptomatic degeneration, which becomes symptomatic, would continue to progressively worsen. (PX 8 pp. 14-15)

Dr. Taylor testified that he personally reviewed the July 16, 2024, cervical MRI. He testified that it revealed disc herniation at C3-4, a large central and left disc herniation at C4-5, and disc pathology at C3-4 and C4-5, which created critical stenosis in the cervical spine. He noted the space available for the spinal cord was less than 10mm at the C3-5 level, which is consistent with the diagnosis of critical cervical stenosis. (PX 8 p. 16) Dr. Taylor testified that

“critical spinal stenosis means there is so much pressure in the spinal cord that once you reach a certain point, which is 10mm, we say that it's critical, meaning that it is an unhealthy situation for the spinal cord. It is a situation that risks worsening cervical cord injury, including catastrophic cervical cord injury. So it just changes the pace at which this problem should be addressed. You don't want to sit on critical cervical spinal stenosis very long because the fear is it could progress to even more dynamic or more loss of function.” (PX 8 pp. 16-17)

Dr. Taylor testified that Petitioner's subjective complaints and physical examination findings were consistent with the pathology identified on the July 16, 2024, cervical MRI.

Dr. Taylor's August 1, 2024, office note states “Structural pathology indicated for surgery, clinical stenosis, C3-4, C4-5 due to herniation ASD.” When asked to explain what that meant, Dr. Taylor testified:

Well, I actually included some of the images in her note, and those show the disc pathology that is nontrivial that can be seen on page 5 of 7 of my note, and I put arrows pointing to the region with HNP, indicating herniated nucleus pulposus. I also showed on page 6 of 7 at C3-4 the space for her spinal cord is 9mm, and the space where her spinal cord at C4-5 is 9.5mm. So her pathology is not subtle. It is what I would consider significant, and it's at two levels, and it is entirely consistent with her reporting of her subjective complaints. I see no inconsistencies here comparing her history to the objective physical findings, including radiographic status. (PX 8 pp. 18-19)

Following the August 1, 2024, office visit, Dr. Taylor testified that he recommended additional diagnostic tests, to include cervical spine radiographs calibrated for magnification to rule out instability, a CT myelogram, and an ENT assessment to assess vocal cord symmetry. (PX 8 p. 19)

Dr. Taylor testified that he recommended Petitioner undergo nonoperative treatment. The real benefit of pain management, according to Dr. Taylor, was to help determine which surgical procedure would be best to address her cervical condition. (PX 8 pp. 19-20)

Dr. Taylor testified that it was important to have the left shoulder evaluated to determine if some of her complaints were directly related to a specific shoulder pathology. However, Dr. Taylor testified that even without a definitive shoulder diagnosis, based on Petitioner's physical examinations and the MRI findings, she was a candidate for neck surgery.

Dr. Taylor testified that because Petitioner received no benefit from the left shoulder injection, at least at that moment she received that injection, her neck was the source of her pain. (PX 8 pp. 23-24)

Regarding causation, in addition to the information contained in his office notes, Dr Taylor was asked to assume the following hypothetical:

Assume for me the history of passing out the beverages on 3/13/2024, as you were told by Ms. Brown on 5/15/2024, so taking into consideration what she told you already, please further assume that the beverages she was passing out were in a standard plastic milk crate. Ms. Brown would estimate the crate would weigh as much as 20 lbs when it is full. During Ramadan the participating inmates can only consume food or drink between 2:00 AM and 3:00 AM therefore, this task has to be done in a fast fashion. Assume that she'll testify that when passing out the beverages she would hold the milk crate by the handle with her left hand and she would carry the crate with her left arm straight and the milk crate down kind of by her side. She would continuously hold the crate with her straight left arm and use her right hand to unlock the cell access doors, and then she would reach with her right hand and pass out the beverages. Assume, further that she started having symptoms as described to you and thereafter she called off on 3/13 and 3/14, hoping that her left arm and neck would calm down, but assume that she thereafter returned to work on or about 3/17 and continued to carry the crate in her left hand as already outlined for you from 3/17 to 3/28. Assume for me that her symptoms worsened in that time frame and that she had to stop working completely on 3/28 because her left shoulder and neck symptoms. Now, taking that additional hypothetical information and the information you gathered directly from Ms. Brown, within a reasonable degree of medical certainty, do you have an opinion as to the cause of Ms. Brown's current cervical and upper extremity symptoms? (PX 8 pp. 24-26)

In response, Dr. Taylor stated: “Yes. I felt that her work exposure described handing out these items permanently aggravated her cervical spine resulting in symptomatic adjacent segment issues, C3-4 and C4-5, leading to her clinical cervical radiculopathy.” (PX 8 p. 26)

Dr. Taylor testified that it was reasonable and necessary for Petitioner to undergo additional testing, pain management, and cervical surgery to treat the effects of her work injury. (PX 8 p. 26)

Dr. Taylor Testify that if [when] Petitioner fails conservative treatment, she will “definitely” need cervical surgery. (PX 8 p. 27)

Dr. Taylor testified that Petitioner’s pre-existing cervical pathology predisposed her to be susceptible to injury with stressors that might not affect a person with a normal spine. (Px 8 pp 27-28) However, the work exposure was at least one of the reasons Petitioner needed neck treatment. (PX 8 p. 28)

Dr. Timothy Farley, Section 12 Report: Left Shoulder:

Respondent had petitioner examined, under section 12 of the Act, by Dr. Timothy Farley, on October 29, 2024. The history of present illness recorded in Dr. Farley's IME report is consistent with the history provided to other medical providers. Dr. Farley reviewed the medical records from 1) Pinckneyville Community Hospital; 2) Dr. Brett Taylor; and 3) the September 3, 2024, left shoulder MRI. (RX pp. 1-4)

Dr. Farley conducted a physical examination of the cervical which revealed decrease range of motion in all planes and a positive Spurling's on the left. The left shoulder examination revealed pain with Hawkins, O'Brien's, and Speed's maneuvers. As well as tenderness with palpation to the posterior shoulder. She was 5-/5 strength with triceps testing on the left compared to the right. (RX 4 p. 4)

Dr. Farley reviewed the September 3, 2024, left shoulder MRI. He felt it showed a meniscoid type labrum with no evidence of type 2 superior labrum tear. There was physiologic fluid seen at the superior labrum which goes underneath the superior labrum but does not undercut into the actual bicep anchor itself. There was no atrophy in the musculature of the rotator cuff. He did not identify any tearing involving the supraspinatus tendon. He agreed that the MRI showed tendinopathy within the rotator cuff tendon. (RX 4 p. 5)

Dr. Farley stated that he did not believe the MRI demonstrated evidence of symptomatic labrum tear nor findings of concerning level of tearing in the rotator cuff tendons.

Dr. Farley did not feel Petitioner had a relevant work-related shoulder condition. He felt the changes on imaging of the left shoulder were age appropriate. Dr. Farley did not believe the mechanism of injury is compatible with the development of long-term shoulder problems. Therefore, he concluded that Petitioner did not have a work related shoulder injury. (RX 4 pp. 6-7)

Dr. Farley felt it was reasonable and necessary for her to undergo x-rays, anti-inflammatory, and the MRI to evaluate her shoulder complaints. However, no treatment was warranted after the shoulder MRI. Regarding additional treatment for the cervical spine, Dr. Farley stated he would have to defer to a spinal specialist. Petitioner was at maximum medical improvement regarding the left shoulder. Only referring to the shoulder, Dr. Farley believed that she could return to work without restrictions. (RX 4 p. 7)

Dr. Robert Bernardi, Section 12 Report: Cervical Spine:

For her cervical condition, Respondent had Petitioner examined, under section 12 of the Act, by Dr. Robert Bernardi, on December 17, 2024. The history of accident provided Dr. Bernardi was consistent with the histories provided to other medical providers. Dr. Bernardi documented that following the C5-C7 anterior decompression fusion, in August of 2013, Petitioner returned to work without formal restrictions in May or April of 2014. Dr. Bernardi

documented that Petitioner had not sought treatment with a medical doctor or chiropractor for her neck between 2014 and March of 2024. (RX 5 p. 1)

Regarding the work injury, Dr. Bernardi documented: “On March 13, 2024, Ms. Brown was carrying a crate containing milk, juice and food trays which she was meting out to Muslim prisoners during the month of Ramadan. She felt a pop in her left shoulder--the side on which she was holding the crate. She had immediate pain deep in the joint. It radiated down to the posterior aspect of the left upper arm and past the lateral aspect of the left elbow before stopping at her mid-forearm. It extended over the top of her left shoulder blade. Paradoxically, it was also associated with pain along the right side of her neck.” (RX 5 pp. 1-2)

Hoping the symptoms would go away, Petitioner did not immediately report her work injury. However, when the symptoms persisted, she reported her injury on March 31, 2024. She was referred to a shoulder specialist which was not approved. She was seen by Dr. Taylor for her cervical condition. She had to wait for the Workers’ Compensation claim to be denied before her private insurance could be used for the various treatments recommended by her medical providers. (RX 5 p. 2)

For her neck condition, Petitioner had undergone physical therapy and had seen Dr. Buenger for pain management. She had undergone two injections and a third was scheduled for December 18, 2024. Petitioner noted that the injections helped with her mobility but not her pain. It was documented that she was taking Norco chronically since her second lumbar fusion.

Petitioner reported that she has plateaued. She continues to have neck pain, which was lateralized to the right. The pain extended inferiorly to the upper inner scapula area. The symptoms she was experiencing over the superior aspect of the left shoulder blade, into the left shoulder joint and her left upper arm/forearm had resolved. She had seen a shoulder specialist and was given an injection and then MRI. She was told that she had a small tear in her shoulder that would heal on its own. (RX 5 p. 2)

Dr. Bernardi documented there was no relationship between Petitioner’s neck symptoms and the time of day. Her symptoms did interfere with her sleep. Cervical flexion and left lateral bending do not bother her, however, cervical extension and right lateral bending do. Left forward rotation was much easier than right forward rotation. Her arms and legs felt deconditioned, but she denied noticing any focal weakness. (RX 5 p. 2)

As part of his IME, Dr. Bernardi reviewed a December 5, 2008, lumbar MRI. Dr. Bernardi also reviewed the post-March 13, 2024, medical records from Pinckneyville Community Hospital, Dr. Brett Taylor, Dr. Joon Ahn, Dr. Farley (10/29/24 IME report), and the July 16, 2024 cervical MRI. (RX 5 pp. 2-3)

A pain diagram filled out at the request of Dr. Bernardi, but not included in Respondent’s trial exhibit, revealed midline burning in the posterior neck, which was concentrated in the lower cervical area and extended both upward and downward. There was also burning along the posterior aspect of the left shoulder. (RX 5 p. 4)

Dr. Bernardi documented his physical examination of Petitioner as follows:

Inspection of the neck was notable for a healed anterior transverse incision. There were no posterior cutaneous abnormalities no step-off/deformities were palpable. I could not appreciate any paracervical or periscapular spasms/trigger points. Cervical flexion was full. I could not elicit a Lhermitte's sign. Cervical extension was slightly limited and associated with complaints of worsening neck discomfort. Range of motions of the shoulder blades were full and non-provocative. Pulses were 1/2 at the wrist. There was no upper extremity edema. On neurological examination, motor power was 5/5 in the upper extremities. Motor tone was normal. There was no atrophy. Deep tendon reflex where 2/4 at the biceps, triceps and brachioradialis. The reflex where 2/4. Ankle reflex were 1/4. I could not elicit a Hoffman's sign. (RX 5 p. 4)

Dr. Bernardi reviewed the July 16, 2024, cervical MRI, which revealed "post-operative changes at C5-6 and C6-7; interbody graphs and anterior plate. Alignment is normal. There were central protrusions at C3-4 and C4-5. These efface the ventral subarachnoid space. The dorsal space is well-preserved and there is no myelomalacia. C2-3 and C7-T1 are unremarkable. On the axials, the protrusions at C3-4 and C4-5 do not produce meaningful central stenosis. There is no foraminal stenosis at any level." (RX 5 p. 4)

Dr. Bernardi also reviewed the October 17, 2024, cervical myelogram. His interpretation was that there were post operative changes at C5 through C7 with solid inner body fusion. There was mild degenerative disc disease at C3-4 > C4-5 -- the anterior spur formation at both is associated with loss of disc height and posterior spurs at C3-4. At both of the C3-4 and C4-5 segments there were midline protrusions. He identified a disc bulge at C3-4. He felt there was no central or foraminal stenosis. At C4-5 there was a central and slightly left-sided protrusion, but it was not broad based. He felt that protrusion effaced the subarachnoid space and produced minimal ventral cord deformation. (RX 5 pp. 4-5)

Dr. Bernardi was of the opinion that Petitioner was status post anterior C5-6 and C6-7 discectomy and fusion, which had taken place more than a decade ago. Petitioner reported doing well following that procedure and was able to return to work without issues until the events of March 13, 2024. Along with post-operative changes, her imaging studies showed disc disease at C3-4 and C4-5. More specifically, the imaging showed loss of disc height (C3-4), anterior spur formation (C3-5), posterior spurring formation (C3-4) and disc bulging (C3-4). He felt these were arthritis-defining changes and were present prior to March 13, 2024. Dr. Bernardi felt the only objective finding on his examination was the anterior neck scar from the prior 2013 fusion. He felt all other identify pathology were either post-operative findings or degenerative. (RX 5 p. 5)

Dr. Bernardi diagnoses included: 1) status post anterior C5-7 discectomy and instrumented fusions; 2) C3-4 and C4-5 generative disc disease (spondylosis); and 3) right-sided neck pain without radicular features. (RX 5 p. 5)

Dr. Bernardi did not believe the disc disease seen at C3-4 and C4-5 was causally related to the reported accident. He felt these changes were all degenerative in nature. Dr. Bernardi acknowledged that an argument could be made that the protrusion seen at C4-5 was potentially acute and potentially post-traumatic and therefore potentially related to the work accident. However, Dr. Bernardi disagreed with the argument he acknowledged was plausible. He felt that because the pathology identified at C3-4 were degenerative in nature, the findings at C4-5 were also “likely” degenerative. Dr. Bernardi stated that even though disc protrusions can be post-traumatic, approximately 40%-50% of protrusions are asymptomatic, and when protrusions do cause symptoms, the causative event is usually undefinable. Dr. Bernardi did not believe the imaging studies showed clinically relevant central or foraminal narrowing. (RX 5 p. 6)

Despite Dr. Bernardi stating early in his report that he did not feel Petitioner’s cervical condition and symptoms were related to her March 13, 2024, work exposure, Dr. Bernardi went on to say: “That being said, I imagine it is possible that carrying a crate with her left arm might have caused a trapezius sprain/strain and the subsequent symptoms she reported approximately 2 weeks later. It might even have caused an aggravation of degenerative disc disease.” (RX 5 p. 6) Dr. Bernardi felt those symptoms should have been resolved within a few weeks of the work exposure. (RX 5 p. 7)

Dr. Bernardi stated that her treatment to date has been reasonable and necessary. (RX 5 p. 7) He did not feel that she should continue to take Norco for her neck or back condition. He felt this medication may be adversely affecting her recovery from the March 13, 2024, work exposure. (RX 5 p. 7)

Dr. Bernardi had no objection to her having the third cervical injection, which was scheduled for the day after the IME visit. He was skeptical that it would provide long term benefit. Despite his documented concerns regarding Petitioner chronicity of her condition, Dr. Bernardi stated that he felt the final injection was “best considered work-related” (RX 5 p. 7)

Dr. Bernardi did not believe Petitioner was a candidate for surgery for her “neck ache”. (RX 5 p. 7)

If Petitioner did not respond favorably to the third and final injection, he felt she should see a physiatrist to determine whether she had exhausted all viable non-operative treatment. Regarding that recommendation, Dr. Bernardi stated: “I think her need for a physiatry evaluation-and with the same caveat note above-is best considered work-related.” (RX 5 p. 7)

Given that he thought additional treatment was appropriate, he did not believe Petitioner had reached maximum medical improvement. He was hopeful that she would achieve maximum medical improvement in the next two to three months. (RX 5 p. 7)

Regarding her ability to work, Dr. Bernardi stated: “I would suggest that she attempt a trial of full duty--hopefully, she can hold out and make it to retirement. If she does not tolerate this trial, three to four weeks of light duty to allow her to recondition would be reasonable. She would need to avoid overhead work. She would need to avoid repetitive neck movements. I would suggest her lifting be restricted to 25 lbs.” (RX 5 p. 8)

CONCLUSIONS OF LAW

Issue (C) – Accident:

The Arbitrator finds Petitioner sustained accidental injuries that arose out of and in the course of her employment on March 13, 2024. This is based on the testimony of Petitioner and the medical records.

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: 1) that the injury occurred in the course of the claimant’s employment, and 2) that the injury arose out of the claimant’s employment. *McAllister v. Ill. Workers’ Comp. Com’n*, 2020 IL 12484.

The phrase “in the course of employment” refers to the time, place and circumstances of the injury. Here, there is no dispute that Petitioner was performing the job tasks of a Correctional Sergeant at Pinckneyville Correctional Center when she was carrying a milk crate containing drinks to Muslim inmates observing Ramadan. Therefore, the Arbitrator finds Petitioner’s injury occurred in the course of her employment.

The “arising out of” component is primarily concerned with causal connection. To satisfy this requirement, it must be shown the injury had its origin in some risk connected with, or incidental to, the employment so to create a causal connection between the employment and the accidental injury. In *McAllister v. Illinois Worker’s Compensation Commission*, the Illinois Supreme Court’s found that an injury “arises out of” an employee’s employment if she can show she was performing 1) acts the employee was instructed to perform by her employer, 2) acts the employee had a common-law or statutory duty to perform, or 3) acts the employee might reasonably be expected to perform incident to the employee’s assigned duties. *Kevin McAllister v. The Illinois Workers’ Compensation Commission* 2020 IL 124848

Here, Petitioner credibly testified that she must serve the Muslim inmates breakfast, in their cells, during the month on Ramadan. Petitioner testified that she must complete this job task between 2:00 and 3:00 am, which made the task fast paced. She further credibly testified that she started experiencing pain in her neck and left shoulder/arm as she carried the milk crate full of drinks to the inmates’ cells. The act that caused her to injure her neck (carrying the milk crate), is clearly an “act the employee was instructed to perform by her employer”. In order to serve the inmates’ breakfast, she had to physically carry the milk crates full of drinks. Therefore, the Arbitrator finds Petitioner’s injury arose out of her employment.

Thus, The Arbitrator finds Petitioner sustained accidental injuries that arose out of and in the course of her employment, on March 13, 2024.

Issue F – Causation:

The Arbitrator finds that Petitioner’s current conditions of ill-being is causally related to her March 13, 2024, work accident. This conclusion is supported by a chain of events analysis, the medical records, and the persuasive testimony of Dr. Taylor and Petitioner.

First, by history, prior to the March 13, 2024, work injury, Petitioner was able to work 8 to 16 hours of overtime a week. She readily admitted to having two prior lumbar surgeries and a prior cervical fusion. Despite the 2013 neck fusion, prior to March 13, 2024, Petitioner’s neck condition was great, and she had not missed work for her cervical spine since 2014. Nor had she sought medical treatment for her neck since 2014. It is clear from the chain of events that carrying the milk crates on March 13, 2024, was the event that precipitated her current cervical symptoms.

Second, Dr. Taylor creditably testified that Petitioner’s complaints and need for treatment were casually related to her March 13, 2024, work injury.

Lastly, even IME-Dr. Bernardi, in his confusing and self-contradicting report, believes Petitioner sustained an injury on March 13, 2024, and he felt that the cervical injections and a future physiatry evaluation was “best considered work-related”.

Therefore, the Arbitrator finds that Petitioner’s current conditions of ill-being is causally related to her March 13, 2024, work accident.

Issue J - Medical benefits:

The Arbitrator finds Petitioner’s treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay the medical providers directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Cedar Court Imaging: \$3,430.00,
- Orthopaedic Center of Southern Illinois: \$830.00,
- Pinckneyville Community Hospital: \$14,850.00
- Town and Country Crossing Orthopedics: \$857.00, and
- Interventional Pain Consultants, LLC: \$6,654.00

The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act of ANY AMOUNT PAID.

Issue K - Prospective Medical:

The Arbitrator finds that Petitioner is entitled to prospective medical treatment recommended by Dr. Taylor. Therefore, Respondent shall approve and pay for the surgical

recommendations outlined by Dr. Taylor. This conclusion is supported by the testimony of Dr. Taylor and Petitioner.

Issue L – Temporary Total Disability:

Respondent shall pay Petitioner temporary total disability benefits of \$1,169.56/week for 58 and 6/7 weeks, commencing March 31, 2024, through May 16, 2025, as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014320
Case Name	William Chad Irvin v. Bleigh Ready Mix
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0022
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Brooke Torrenga

DATE FILED: 1/27/2026

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM CHAD IRVIN,

Petitioner,

vs.

NO: 22 WC 14320

BLEIGH READY MIX,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care and temporary total disability (TTD) benefits, and being advised of the facts and applicable law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2025 is hereby affirmed and adopted.

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

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

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

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

JANUARY 27 2026

CAH/pm

O: 1/15/26

052

/s/ *Christopher A. Harris*

Christopher A. Harris

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Marc Parker*

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014320
Case Name	William Chad Irvin v. Bleigh Ready Mix
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Brooke Torrenga

DATE FILED: 3/14/2025

/s/ Linda Cantrell, Arbitrator

Signature**INTEREST RATE WEEK OF MARCH 11 2025 4.08%**

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

William Chad Irvin
 Employee/Petitioner

Case # **22** WC **014320**

v.

Consolidated cases: _____

Bleigh Ready Mix
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/25/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute? **Whether Petitioner is entitled to an underpayment of TTD benefits.**
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Lost wages to attend Section 12 examinations.**

FINDINGS

On the date of accident, **5/9/22**, 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 **\$31,105.26**; the average weekly wage was **\$797.57**.

On the date of accident, Petitioner was **49** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$14,814.72** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** in other benefits, for a total credit of **\$14,814.72**.

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

ORDER

Respondent shall pay the medical bills outlined in Petitioner's Group Exhibit 7, pursuant to the Illinois medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall further provide and pay for the recommended medical treatment, including, but not limited to, a right reverse total shoulder arthroplasty, and all reasonable and necessary attendant care.

Respondent shall pay Petitioner temporary total disability benefits of **\$531.71/week** for **37-2/7ths** weeks, commencing **5/10/22** through **6/9/22** and **6/28/22** through **2/12/23**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for TTD benefits paid in the amount of \$14,814.72, resulting in an underpayment of TTD benefits in the amount of \$5,007.43 ($\$531.71 \times 37.28 = \$19,822.15 - \$14,814.72$).

Respondent shall pay to Petitioner his average daily wage of \$159.51 ($\$797.57 / 5$) for attending Section 12 examinations on 3/22/23 and 5/6/24, for total lost wages of \$319.02.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

A handwritten signature in cursive script that reads "Linda J. Cantrell". The signature is written in dark ink and is positioned to the left of the date.

MARCH 14 2025

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS’ COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

WILLIAM CHAD IRVIN,)
)
Employee/Petitioner,)
)
v.) Case No.: 22-WC-014320
)
BLEIGH READY MIX,)
)
Employer/Respondent.)

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Springfield on February 25, 2025, pursuant to Section 19(b) of the Act. On 6/2/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right shoulder as a result of climbing into a semi on 5/9/22. (AX2)

The parties stipulated that Respondent paid temporary total disability benefits for the claimed periods 5/10/22 through 6/9/22 and 6/28/22 through 2/12/23. Petitioner alleges an underpayment of TTD benefits based on the stipulated average weekly wage of \$797.57. The parties stipulated that Respondent is entitled to a credit of \$14,814.72 in TTD benefits paid.

The issues in dispute are causal connection, medical bills, underpayment of temporary total disability benefits, prospective medical care, and lost wages to attend Section 12 examinations.

TESTIMONY

Petitioner was 49 years old, single, with no dependent children at the time of accident. He was employed by Respondent as a cement truck driver for approximately four years. His job duties included lifting hoses, filling water tanks, climbing a ladder to the top of his truck to wash out gravel, and lifting 35 to 45-pound chutes that have concrete on them. Petitioner testified that he injured his right shoulder on 5/9/22 while attempting to pull himself up into his truck. He opened the truck door with his left hand, grabbed a pull bar with his right hand, and put his foot on the step to pull his body up. He stated the truck door came back and hit his left shoulder throwing him off balance. He felt a pop in his right shoulder followed by a burning sensation and extreme pain. He went to the ground and rested his arm against the fuel tank. Petitioner is right hand dominant.

Petitioner reported the accident and went to the emergency room that day. He received two shots of pain medication and was referred to Blessing Physicians Services. Petitioner was placed on light duty restrictions and underwent an MRI. He began treating with Dr. Acevedo on 6/28/22 and underwent a Section 12 examination by Dr. Rotman in July 2022. Dr. Acevedo performed a right shoulder surgery on 8/17/22 and Petitioner began physical therapy approximately one month later. He testified that during physical therapy he had a popping sensation in his shoulder when lifting his arm above chest level. Dr. Acevedo ordered an MRI arthrogram and performed a second right shoulder surgery in January 2023.

Petitioner testified that he asked Dr. Acevedo if he could return to light duty work in February 2023, which Respondent accommodated. Petitioner initially performed office work and then began driving a dump truck. He testified that unlike mixer trucks, dump trucks were easier to get in and out of and are automatics. Petitioner testified that he keeps his shoulder down while operating the levers on the dump truck, and he does not have to roll tarps or get in and out of the truck as often.

Petitioner's condition did not improve following the second shoulder surgery. He was scheduled for a second Section 12 examination by Dr. Rotman on 3/22/23. He was paid mileage and upon arrival he was told the examination had been cancelled. Petitioner was not paid TTD or wages for taking off work to attend the examination by Dr. Rotman. Petitioner underwent another MRI arthrogram in November 2023 and Dr. Acevedo referred him to Dr. Leutz for a possible third surgery. Dr. Leutz recommended a reverse total shoulder replacement and Petitioner underwent a CT scan on 2/16/24. Petitioner sought a second opinion with Dr. Greatting who agreed with Dr. Leutz's surgical recommendation.

Petitioner underwent a second Section 12 examination by Dr. Rotman on 5/6/24. He did not receive lost wages for attending the appointment. Petitioner returned to Dr. Leutz in July 2024 who continued to recommend a reverse total shoulder replacement. Petitioner continues to work with light duty restrictions. He testified that it feels like a weight is pushing down on his shoulder and he has a throbbing pain from his clavicle to the back of his bicep. He experiences daily cramping and extreme pain with movement of his shoulder. Petitioner testified that he had no treatment or issues with his right shoulder prior to 5/9/22 and he was able to perform his full job duties.

On cross-examination, Petitioner testified that his medical treatment was initially authorized by Respondent's insurance carrier following the accident. He testified that his shoulder condition did not improve after his first or second surgery. He has difficulty and pain lifting his arm. Petitioner testified that the popping sensation he experienced during physical therapy was not present prior to surgery. He had cramping and spasms after the accident that have not improved.

MEDICAL EVIDENCE

On 5/9/22, Petitioner presented to the emergency room at Blessing Hospital complaining of right shoulder pain that started that day. (PX2, p. 1-12) He reported that he was pulling himself into his semi-truck using the grab bar when he felt a pop in his shoulder followed by

immediate pain. Petitioner had no history of right shoulder injuries. X-rays were unremarkable. A rotator cuff injury was suspected, and injections of Morphine and Toradol were administered. Petitioner was ordered to follow up with orthopedics. He was prescribed Norco and a sling upon discharge.

On 5/10/22, Petitioner presented to Blessing Physician Services (BPS) and reported a consistent history of injury. (PX3, p. 1-3) He complained of constant sharp lateral and anterior pain. X-rays revealed mild degeneration in the AC joint and glenohumeral joint space which appeared to be asymptomatic. A right shoulder MRI was ordered, and Petitioner was placed on restrictions of no use of his upper right extremity.

On 5/24/22, Petitioner underwent an MRI of the right shoulder at Culbertson Memorial Hospital that revealed a large full thickness tear of the supraspinatus and infraspinatus with torn tendinopathic margins retracted nearly to the glenoid, moderate insertional right subscapularis tendinopathy with full thickness tearing of the superior footprint and mild medial subluxation of the bicipital tendon at the superior margin of the bicipital groove, inferior right glenoid labral tear with large inferior paralabral cyst formation, mild right inferior glenohumeral joint chondrosis, and severe right acromioclavicular joint osteoarthritis. (PX4, p 8-9)

On 6/9/22, Petitioner returned to BPS with worsening pain at 8/10. He had a sharp, aching pain that interfered with his sleep. (PX3, p. 4-6) NP Andel reviewed the MRI and referred Petitioner to Dr. Acevedo for surgical consultation. Petitioner was placed on restrictions of no lifting, pushing/pulling greater than 2 pounds with his right arm, and no use of ladders.

On 6/28/22, Petitioner was examined by Dr. Acevedo for a traumatic complete tear of the right rotator cuff. (PX3, p. 8-12) Petitioner reported that on 5/9/22 he was getting into his truck and the door swung back and hit his left shoulder. He was attempting to lift himself up with his right arm and heard a pop. Dr. Acevedo reviewed the MRI and noted a large rotator cuff tear involving the supraspinatus and infraspinatus with retraction to the glenohumeral joint, tearing of the superior subscapularis associated to subluxation of the long head of the bicep tendon, SLAP tear and degenerative labral changes, and moderate to severe arthritis of the AC joint. (PX4) Dr. Acevedo recommended arthroscopic repair of the rotator cuff given the traumatic nature of the tear. He recommended preoperative rehabilitation to improve range of motion which would allow Petitioner time to stop chewing tobacco. Dr. Acevedo did not address Petitioner's work status.

On 7/11/22, Petitioner was examined by Dr. Mitchell Rotman pursuant to Section 12 of the Act. (RX1, Ex. 2) Petitioner reported a consistent history of accident. Dr. Rotman noted Petitioner had no history of right shoulder problems prior to 5/9/22. Petitioner reported he felt a pop over the front of his shoulder in the area of his bicep when he was pulling himself up into his truck. He had pain in the front and side of his shoulder. Dr. Rotman noted Petitioner worked for Respondent since 2017 and worked 40+ hours per week. He reviewed the emergency room record, x-rays, NP Andel's record dated 5/10/22, and the MRI dated 5/24/22. He did not have Dr. Acevedo's records to review, but noted he recommended a rotator cuff repair. He opined that the MRI showed no acute findings, and the rotator cuff tear was chronic and irreparable.

Dr. Rotman's physical examination revealed large deltoid muscles, greater on the right. His right shoulder was stiff with limited and painful range of motion. Petitioner had clicking with range of motion of the right shoulder and weakness. Dr. Rotman diagnosed a right chronic rotator cuff tear associated with thinning of the cuff, two tendon tears involving the supraspinatus and infraspinatus retracted almost to the glenoid, significant bone spurs from the overlying AC joint, and significant pathology in the biceps due to the large chronic tears. He stated that when Petitioner felt a pop while pulling himself up, the force would have gone into his biceps and not his rotator cuff. Dr. Rotman was certain Petitioner felt a pop because he had plenty of clicking in his shoulder during examination due to the chronic rotator cuff tear and biceps subluxation and not necessarily an acute injury. Dr. Rotman believed that Petitioner's pain was coming from his biceps which he stated was very common with people who have chronic rotator cuff tears. He opined that Petitioner merely triggered pain from a chronic condition. Dr. Rotman testified that Petitioner had been living with his chronic rotator cuff tear for quite a while and he was able to lift his arm fully without his rotator cuff due to the large nature of his deltoid muscle, which became large due to overcompensation. He opined that Petitioner was developing frozen shoulder and was high risk due to diabetes. Dr. Rotman recommended a right shoulder arthroscopy, decompression, and biceps tenotomy. He opined that Petitioner's biceps tendon was aggravated by the work accident, but the rotator cuff was likely irreparable and was not causally related to the work accident. He stated that Petitioner's stiffness was a poor prognostic for recovery secondary to diabetes and a lack of therapy. Dr. Rotman recommended restrictions of no overhead work.

On 8/2/22, Dr. Acevedo recommended a right rotator cuff repair involving the supraspinatus, infraspinatus, and subscapularis, biceps tenodesis, and subacromial decompression with possible augment repair with allograft. He opined that a back up plan would be to perform a superior capsular reconstruction. He did not address Petitioner's work status. (PX3, p. 13-17)

On 8/17/22, Dr. Acevedo performed a right shoulder rotator cuff repair, supraspinatus and infraspinatus repair, biceps tenodesis, subacromial decompression, and debridement. (PX2, p. 17-20)

On 9/1/22, Petitioner reported he was doing well. He was performing home exercises and wearing a brace immobilizer. He had intermittent pain rated 8/10. Petitioner was referred to physical therapy and ordered to remain off work. (PX3, p. 18-21) Petitioner began physical therapy at Advance Physical Therapy on 9/16/22. (PX5, p. 7) On 9/22/22, Petitioner reported he had anterior popping in his shoulder and 6/10 pain. He had active range of motion and was able to perform pendulum exercises without significant pain. Petitioner was instructed to continue therapy and remain off work. (PX3, p. 21-24)

On 10/14/22 and 10/26/22, Petitioner reported to his physical therapist he had a catching sensation in his shoulder with elevation modalities. (PX5, p. 29, 38)

On 11/3/22, Petitioner returned to Dr. Acevedo and reported persistent pain of 7/10 localized to the lateral shoulder. He reported hearing a large popping sound during physical therapy a month or two ago. Petitioner completed 24 therapy sessions and continued to have

significant limitations with abduction with associated pain and weakness. A possible re-tear was suspected and an MRI arthrogram was ordered. Petitioner was instructed to remain off work. (PX3, p. 25-28)

On 11/16/22, Petitioner underwent a right shoulder MRI arthrogram for worsening shoulder pain. (PX2, p. 21-22) The study showed a full-thickness full-width tear of the supraspinatus extending to the anterior fibers of the infraspinatus, full-thickness tear of the subscapularis with tendinosis, diffuse labral degeneration with a posteroinferior chondrolabral tear, mild glenohumeral osteoarthritis, and moderate acromioclavicular arthropathy.

On 12/1/22, Dr. Acevedo reviewed the MRI arthrogram and recommended a right revision arthroscopic rotator cuff repair versus a superior capsular reconstruction in the setting of irreparable tissue. He noted that Petitioner had pseudoparalysis of the right upper extremity, lateral arm pain, weakness with external rotation and abduction, and an inability to elevate his arm. Petitioner was ordered to remain off work. (PX3, p. 29-33)

On 1/4/23, Dr. Acevedo performed a right revision arthroscopic rotator cuff repair. (PX2, p. 25-32) Pre and postoperative diagnosis was complete rupture of the right rotator cuff.

On 1/19/23, Dr. Acevedo noted intraoperatively the rotator cuff had retracted to the level of the glenoid, with no significant degenerative changes in the glenohumeral joint. He had a complex tear with poor quality tissue and an L-type configuration. He noted that given the degree of injury to the rotator cuff, only a single row repair was possible. Dr. Acevedo noted that Petitioner wanted to be more active than instructed. Petitioner was referred to physical therapy and released to light duty work effective 2/6/23 with restrictions of no pushing/pulling/lifting greater than 10 pounds. (PX3, p. 37-40) Petitioner began physical therapy at Advance Physical Therapy on 1/24/23. (PX5, p. 63)

On 2/2/23, Dr. Acevedo released Petitioner to return to work with restrictions of no pushing/pulling/lifting greater than 10 pounds effective 2/6/23. (PX3, p. 40)

On 3/2/23, Dr. Acevedo noted Petitioner still had pain, but his symptoms were significantly better compared to prior to the second surgery. However, Dr. Acevedo also noted Petitioner had significant pain that restricted him from performing daily life activities, including lifting a bottle of water and showering. Petitioner rated his pain 8-9/10 because he just completed physical therapy, which he had done twice a week. He took Advil for his symptoms. His pain radiated down and was constant and throbbing. Petitioner expressed concern about getting back in his truck. A steroid injection did not improve his symptoms. Dr. Acevedo ordered Petitioner to continue physical therapy and work restrictions with no lifting greater than 10 pounds. He noted Petitioner was a candidate for a reverse total shoulder arthroplasty. (PX3, p. 41-43)

On 5/9/23, Dr. Acevedo noted Petitioner was progressing well, but slowly. He had intermittent mild shoulder pain with arm elevation, improved active forward flexion, and full passive arm elevation without significant pain. Dr. Acevedo recommended continued physical therapy and restricted Petitioner from lifting greater than 15 pounds, with a 5-pound incremental increase per month as tolerated. (PX3, p. 44-48) On 6/19/23, Dr. Acevedo allowed Petitioner to

gradually advance activities as tolerated starting with a 20-pound weight restriction and increasing weight by 5 pounds per month.

On 7/20/23, Dr. Acevedo noted Petitioner continued to have intermittent pain and difficulty with overhead motion, and 4/5 weakness and limited elevation and external rotation. He allowed Petitioner to return to work on 7/24/23 with restrictions of no lifting/carrying more than 10 pounds and no driving a cement truck. Dr. Acevedo opined that there was a low probability that Petitioner would be able to return to full duty activities that involved lifting greater than 30 pounds overhead. He opined that Petitioner may require a shoulder replacement in the future. (PX3, p. 50-53)

On 10/19/23, Dr. Acevedo noted Petitioner had undergone extensive physical therapy with continued limitations with active elevation and painful passive range of motion. Petitioner was frustrated with his lack of progress and had significant limitations with activities of daily living due to pain and weakness. Dr. Acevedo noted Petitioner had external rotational lag suggestive of a high-grade re-tear of the rotator cuff. Petitioner continued taking prescription Ibuprofen. He reported that Respondent continued to reduce the amount of physical therapy sessions authorized. He had constant stabbing pain with passive motion and difficulty lifting 7 pounds of weight off a table. Dr. Acevedo recommended continued physical therapy and ordered an MRI arthrogram. (PX3, p. 55-58) The MRI was performed on 11/28/23 and was unchanged from the prior MRI. (PX2, p. 33-38)

On 1/11/24, Dr. Acevedo noted Petitioner had early stages of rotator cuff tear arthropathy. He noted the MRI confirmed a massive retracted re-tear with proximal humeral head migration. Dr. Acevedo recommended obtaining a second opinion from Dr. Leutz for a reverse total shoulder replacement given Petitioner's young age. He was prescribed Tramadol and continued on work restrictions. (PX3, p. 59-62)

On 2/5/24, Petitioner was examined by Dr. Darr Leutz. Dr. Leutz opined that due to the nature of the rotator cuff retears and the early arthrosis of the joint and high riding humeral head, a reverse total shoulder replacement was appropriate. He stated that due to Petitioner's young age he would require a revision total shoulder replacement in the future. (PX3, p. 63) On 2/5/24, Petitioner underwent a right shoulder CT scan that revealed evidence of a massive rotator cuff tear. (PX2, p. 41)

On 3/7/24, Petitioner was examined by Dr. Mark Greatting for a second opinion. (PX6) Dr. Greatting reviewed the images of the MRI dated 11/16/23, x-rays, and CT scan. He opined that the only reasonable option for Petitioner was a reverse shoulder arthroplasty to decrease pain and improve function. Dr. Greatting stated that Petitioner would have to avoid heavy lifting and high impact activities on a regular basis following the procedure; however, he would likely be able to return to work in his current position driving a dump truck.

On 5/6/24, Petitioner underwent a second Section 12 examination by Dr. Rotman. (RX1, Ex. 3) Dr. Rotman again opined that Petitioner's rotator cuff was irreparable and surgical attempts should not have been made. He stated that if Petitioner's surgery was limited to a biceps tenotomy, decompression, and debridement, which he opined were causally related to the work

accident, his shoulder would not have destabilized to the point he now requires a reverse total arthroplasty. Dr. Rotman opined that Petitioner did not sustain an acute rotator cuff tear as a result of the work accident, which was supported by the operative report that showed only chronic findings. He stated, "His surgical treatment has certainly been the cause of the worsening of his right shoulder condition and an extremely prolonged delay in his recovery..."

Dr. Rotman diagnosed right rotator cuff arthropathy. He opined that none of Petitioner's treatment was reasonable or necessary, except the causally related biceps tendon release. He opined that Petitioner required a reverse total arthroplasty due to the ill-advised surgeries. Dr. Rotman believed a reverse total arthroplasty would improve Petitioner's range of motion and strength, but he would require permanent restrictions of no overhead activities and could not return to his previous position as a cement truck driver. He anticipated that Petitioner would be at MMI approximately six months following the reverse total arthroplasty.

Dr. Rotman noted that he had not been given copies of the two MRIs or x-rays performed since his last examination. He stated it would be helpful to obtain color photographs of the two arthroscopic surgeries to generate opinions on the repair of the rotator cuff, including the type and chronicity of the tissue attempted to be repaired.

On 7/1/24, Petitioner returned to Dr. Leutz and reported his condition was worsening. He had sharp pain rated 8/10 with constant pressure and numbness/tingling. Petitioner was instructed to get pre-operative clearance.

On 7/18/24, Dr. Leutz authored a work slip placing Petitioner on restrictions of no lifting greater than 10 pounds and no overhead lifting. (PX3, p. 75)

Dr. Darr Leutz testified by way of evidence deposition on 11/13/24. (PX8) Dr. Leutz is a board-certified orthopedic surgeon and performs one to two reverse total arthroplasties per week on average. He testified that Petitioner had pain, limited use of his arm, and weakness when he examined him. Dr. Leutz reviewed his partner Dr. Acevedo's medical records and the diagnostic studies performed prior to his examination. His physical examination revealed a significant amount of crepitus in the shoulder with range of motion, positive and painful impingement and Speeds testing, and decreased strength in all ranges. He diagnosed rotator cuff arthropathy, which is arthritis where the humeral head is not functioning properly, and a degenerative joint that was not repairable. He opined that the only option Petitioner had for pain control and improved function was to undergo a reverse total arthroplasty. Dr. Leutz testified that Petitioner would have early wear and tear and loosening of the components which would require a revision due to Petitioner's young age, body mass, and job duties as a laborer.

Dr. Leutz testified that he placed Petitioner on restrictions after he initially examined him. The CT scan he ordered showed severe degenerative changes, a significantly high riding humeral head indicating the humeral head was not opposing the glenoid or the cup portion that leads to pseudo paralysis where the patient cannot lift their arm more than 45 to 50 degrees away from their body, which is called rotator cuff arthropathy. Dr. Leutz testified that Petitioner's condition is worsening, and he continues to recommend surgery. He opined that Petitioner's

condition, two prior surgeries, and the need for a reverse total arthroplasty, were causally related to the work accident of 5/9/22.

On cross-examination, Dr. Leutz testified that Petitioner's mechanism of injury was the type that could cause a biceps tendon injury. He testified that an acute traumatic rotator cuff tear would typically cause immediate pain, limited motion, and weakness. He stated that half of his patients feel a pop with an acute injury. Dr. Leutz testified that he reviewed the MRI films dated 11/28/23, and he may have reviewed the report of the MRI performed prior to Petitioner's surgeries. He reviewed Dr. Acevedo's medical records that stated the first MRI showed a massive rotator cuff tear.

Dr. Mitchell Rotman testified by way of evidence deposition on 12/17/24. (RX1) Dr. Rotman is a board-certified orthopedic surgeon. His testimony was consistent with his written reports dated 7/11/22 and 5/6/24. Dr. Rotman testified that Petitioner told him he was completely asymptomatic prior to 5/9/22. Dr. Rotman testified that Petitioner had been living with a chronic rotator cuff tear without even knowing it and biceps subluxation. He testified that Petitioner triggered pain from "this old problem that's been going on with his shoulder for quite some time and the pain that he triggered was mainly from the biceps".

Dr. Rotman testified that his second examination showed Petitioner's symptoms had worsened. He opined that Petitioner's need for a reverse total arthroplasty was not causally related to the work accident, but due to the two surgical attempts to repair an irreparable rotator cuff tear that destabilized his shoulder.

On cross-examination, Dr. Rotman testified that he had not reviewed any medical records that pre-dated Petitioner's work accident, and Petitioner denied any history of right shoulder problems prior to 5/9/22. He had no reason to dispute Petitioner's mechanism of injury and found Petitioner's history to be consistent. Dr. Rotman agreed that a sudden onset of pain and feeling a pop are signs of an acute injury. He opined that the work accident triggered pain in Petitioner's chronic rotator cuff and biceps conditions. He agreed that a triggering of pain can represent an aggravation of a pre-existing condition. Dr. Rotman agreed that the objective findings on the initial MRI supported Petitioner's subjective complaints.

Dr. Rotman testified that although he would not have attempted to repair Petitioner's rotator cuff, he would not say that the two surgeries met the criteria for being outside the standard of care. He did not find any evidence of an acute aggravation of Petitioner's rotator cuff tear.

CONCLUSIONS OF LAW

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

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam*

Masonry v. Indus. Comm'n, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

When a preexisting condition is present, a claimant must show that “a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee’s current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” *St. Elizabeth’s Hospital v. Workers’ Comp. Comm’n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Accidental injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm’n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a preexisting condition exists, recovery may be had if a claimant’s employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm’n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant’s condition. *Land & Lakes Co. v. Indus. Comm’n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm’n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm’n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm’n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm’n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

Petitioner was a cement truck driver for Respondent for approximately four years prior to his undisputed accident on 5/9/22. There was no evidence that Petitioner had any issues or treatment for his right shoulder prior to the work accident. He was able to perform his full job duties prior to 5/9/22. Petitioner experienced a sudden onset of right shoulder pain, reported the accident, and sought emergent treatment the day of the accident. Petitioner reported a consistent history of injury to all of his treating physicians.

Respondent’s Section 12 examiner, Dr. Rotman, stated that when Petitioner felt a pop while pulling himself up, the force would have gone into his biceps and not his rotator cuff. Dr. Rotman was certain Petitioner felt a pop because he had clicking in his shoulder during examination due to the chronic rotator cuff tear and biceps subluxation. Dr. Rotman believed that Petitioner’s pain was coming from his biceps which he stated was very common with people who have chronic rotator cuff tears. He opined that Petitioner’s bicep condition was aggravated by the work accident and he recommended a right shoulder arthroscopy, decompression, and biceps tenotomy.

Dr. Rotman believed that Petitioner had been living with a chronic, asymptomatic rotator cuff tear for quite a while and he was able to lift his arm fully without his rotator cuff due to the large nature of his deltoid muscle, which became large due to overcompensation. He testified that Petitioner triggered pain from “this old problem that’s been going on with his shoulder for quite some time and the pain that he triggered was *mainly* from the biceps”. He opined that the work accident triggered pain in Petitioner’s chronic rotator cuff and biceps conditions. He agreed

that a triggering of pain can represent an aggravation of a pre-existing condition. Dr. Rotman agreed that the objective findings on the initial MRI supported Petitioner's subjective complaints.

Dr. Rotman opined that Petitioner's chronic rotator cuff was irreparable and surgical attempts should not have been made. He stated that if Petitioner's surgery was limited to a biceps tenotomy, decompression, and debridement, which he opined were causally related to the work accident, his shoulder would not have destabilized to the point he now requires a reverse total arthroplasty. Dr. Rotman stated, "His surgical treatment has certainly been the cause of the worsening of his right shoulder condition and an extremely prolonged delay in his recovery...". He opined that Petitioner's need for a reverse total arthroplasty was not causally related to the work accident, but due to the two surgical attempts to repair an irreparable rotator cuff tear that destabilized his shoulder. Dr. Rotman agreed that a reverse total arthroplasty would improve Petitioner's range of motion and strength.

Based on Dr. Rotman's opinion and the law in Illinois, the Arbitrator finds that Petitioner's current condition of ill-being and need for treatment is causally connected to the work accident. An employee is entitled to benefits where a second injury occurs due to treatment for the first. See *Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986). "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). Where the second injury occurs due to treatment for the first, there is no break in the causal chain. See *Int'l Harvester Co. v. Indus. Comm'n*, 263 N.E.2d 49 (Ill. 1970); *Shell Oil v. Indus. Comm'n*, 119 N.E.2d 224 (Ill. 1954); *Harper v. Indus. Comm'n*, 180 N.E.2d 480 (Ill. 1962); *Tee Pak, Inc. v. Indus. Comm'n*, 490 N.E.2d 170 (Ill. 1986).

The Arbitrator also notes that the Illinois Appellate Court recently held in *Tazewell County v. IWCC*, 2025 IL App (4th) 230754WC ¶ 31, that when a preexisting condition is asymptomatic and then becomes painful as the result of work-related activity, that symptomatic condition is compensable under the Act as an aggravation of the preexisting condition even in the absence of an organic or structural change in the preexisting condition. When a preexisting asymptomatic condition becomes painful for reasons other than an organic or structural change or natural progression, it follows that the preexisting condition was aggravated by something. *Id.* If the aggravation is work-related, and solely causes pain, we hold that the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition. *Id.*

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 5/9/22.

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

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

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

Based upon the above findings as to causal connection, the Arbitrator finds that Petitioner is entitled to medical benefits. Drs. Acevedo, Greatting, Leutz, and Rotman agree that Petitioner requires a right reverse total shoulder arthroplasty. Dr. Rotman opined that the work accident aggravated and triggered pain in Petitioner's chronic rotator cuff and biceps conditions. Although Dr. Rotman opined that Petitioner's massive, chronic rotator cuff tear was irreparable and the first two arthroscopic surgeries were unreasonable and unnecessary, he opined that Petitioner required a reverse total arthroplasty as a result of the first two surgeries that destabilized his shoulder.

Therefore, Respondent shall pay the medical bills outlined in Petitioner's Group Exhibit 7, pursuant to the Illinois medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall further provide and pay for the recommended medical treatment, including, but not limited to, a right reverse total shoulder arthroplasty, and all reasonable and necessary attendant care.

Issue (L): What temporary benefits are in dispute? (TTD)
Whether Petitioner is entitled to an underpayment of TTD benefits.

The parties stipulated that Respondent paid temporary total disability benefits for the claimed periods 5/10/22 through 6/9/22 and 6/28/22 through 2/12/23. Petitioner alleges an underpayment of TTD benefits based on the stipulated average weekly wage of \$797.57.

On 5/10/22, Petitioner was placed on restrictions of no use of his right upper extremity. On 6/9/22, Petitioner was placed on restrictions of no lifting, pushing/pulling greater than 2 pounds with his right arm, and no use of ladders, pending examination by Dr. Acevedo. There was no evidence that Respondent accommodated Petitioner's work restrictions of 6/9/22; however, Petitioner claims entitlement to TTD benefits from 5/10/22 through 6/9/22.

On 6/28/22, Dr. Acevedo recommended rehabilitation to improve range of motion prior to surgery. On 7/11/22, Dr. Rotman recommended a right shoulder arthroscopy, decompression, and biceps tenotomy and work restrictions of no overhead work. On 8/17/22, Dr. Acevedo performed a right shoulder rotator cuff repair, supraspinatus and infraspinatus repair, biceps tenodesis, subacromial decompression, and debridement. Petitioner remained off work until he underwent a right revision arthroscopic rotator cuff repair on 1/4/23. On 1/19/23, Dr. Acevedo released Petitioner to light duty work effective 2/6/23 with restrictions of no

pushing/pulling/lifting greater than 10 pounds. Petitioner testified that he returned to light duty work in February 2023. Petitioner claims entitlement to TTD benefits from 6/28/22 through 2/12/23.

Therefore, Respondent shall pay temporary total disability benefits of \$531.71/week for 37-2/7ths weeks, commencing 5/10/22 through 6/9/22 and 6/28/22 through 2/12/23, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for TTD benefits paid in the amount of \$14,814.72, resulting in an underpayment of TTD benefits in the amount of \$5,007.43 ($\$531.71 \times 37.28 = \$19,822.15 - \$14,814.72$).

Issue (O): Whether Petitioner is entitled to lost wages for attending Section 12 examinations.

Petitioner was initially examined by Dr. Rotman pursuant to Section 12 of the Act on 7/11/22. Petitioner did not testify that he was or was not paid lost wages for attending the examination on that date. Petitioner testified that he presented to Dr. Rotman's office on 3/22/23 for another Section 12 examination at the direction of Respondent. He testified that upon arrival he was told the examination had been cancelled. It was undisputed that Petitioner appeared for the examination and five photographs taken by Petitioner were admitted into evidence as proof he was present at Dr. Rotman's office. (PX12) Petitioner testified that he was ultimately examined a second time by Dr. Rotman on 5/6/24; however, Respondent did not pay his wages for attending that examination.

On 3/23/23, Petitioner's counsel authored an email to Respondent's counsel advising that neither he nor Petitioner were notified that the Section 12 examination had been cancelled. Petitioner demanded mileage and lost wages. (PX12)

Section 12 of the Act provides, in pertinent part:

"An employer requesting such an examination, of an employee residing within the State of Illinois, shall deliver to the employee with the notice of the time and place of examination sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of examination, and the cost of meals necessary during the trip, and if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall reimburse him for such loss of wages upon the basis of his average daily wage." 820 ILCS 305/12. *Emphasis added.*

Petitioner testified un rebutted that he was not paid lost wages for attending the Section 12 examinations on 3/22/23 and 5/6/24, and Respondent presented no evidence that Petitioner was not entitled to such compensation. The Arbitrator finds that Petitioner is entitled to lost wages for attending the Section 12 examinations on 3/22/23 and 5/6/24.

Based on the parties stipulated average weekly wage of \$797.57, Respondent shall pay Petitioner's average daily wage of \$159.51 ($\$797.57 / 5$) for 3/22/23 and 5/6/24, for total lost wages of \$319.02.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

A handwritten signature in cursive script, reading "Linda J. Cantrell". The signature is written in dark ink and is positioned to the left of the date.

MARCH 14 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002025
Case Name	Insurance Compliance v. K&N Excavating
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0023
Number of Pages of Decision	7
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Joseph L. Moore
Respondent Attorney	

DATE FILED: 1/27/2026

/s/ Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

- ☐ Affirm and adopt (no changes)
- ☐ Affirm with changes
- ☐ Reverse
- ☐ Modify

☐ Injured Workers' Benefit Fund (§4(d))

☐ Rate Adjustment Fund (§8(g))

☐ Second Injury Fund (§8(e)18)

☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois)
Department of Insurance,)
Insurance Compliance Department,)

Petitioner,

NO: 20 WC 2025

V.

Chris Koltzenburg, individually and as owner, and Cliff Koltzenburg, individually and as owner, and Nancy Koltzenburg, individually and as owner, of K&N Excavating,

Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action against the above-captioned Respondents alleging violations of Section 4(a) of the Illinois Workers' Compensation Act (the Act) and Section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (the Rules). This matter proceeded to hearing ex parte on January 15, 2026 before Commissioner Christopher Harris in Springfield, Illinois. Petitioner was represented by the Office of the Illinois Attorney General and no one appeared on behalf of the Respondents. A record was taken.

Petitioner claimed that Respondents operated a business but failed to provide the required workers' compensation insurance coverage for its employees. Petitioner seeks the maximum fine allowed under the Act of \$500.00 per day for each day that Respondents lacked workers' compensation insurance, as well as an additional fine that Petitioner described as "Premium Saved." (T.10-12; Ex. 3).

The Commission, after considering the record in its entirety and being advised of the applicable law, finds sufficient evidence of non-compliance with the pertinent provisions under Section 4(a) of the Act and Section 9100.90 of the Rules which shall result in a penalty set in accordance with Section 4(d) of the Act.

FINDINGS OF FACT

Petitioner submitted Petitioner's Exhibits 1 and 2 into evidence which contained notices to the named Respondents regarding their non-compliance and the hearing dates (then and now) set in this matter. As to the hearing date scheduled for January 15, 2026, Petitioner provided a signed and notarized Affidavit of Service showing that the Office of the Illinois Attorney General personally served Christopher Koltzenburg, on December 12, 2025, with notice of the insurance compliance hearing. The notice was in the form prescribed by the Rules. (Ex. 1; *50 Ill. Adm. Code 9100.90(c)*). Petitioner did not offer any evidence showing proof of service of notice on Cliff Koltzenburg or Nancy Koltzenburg. No one appeared on behalf of the Respondents on January 15, 2026.

Megan Drew, an investigator for the Illinois Department of Insurance, Insurance Compliance Department, was the sole witness to testify at the hearing. On behalf of Petitioner, she testified that she became familiar with K&N Excavating after receiving notification of an underlying workers' compensation claim that involved no insurance on the alleged accident date, and which named the Injured Workers' Benefit Fund (IWBF) as a party. (T.4-6). Ms. Drew testified that K&N Excavating was an excavating business, as their name suggested, and they performed digging and tearing down of buildings. (T.12-13). She obtained information about the business through the underlying workers' compensation claim, and testified that the City of Mt. Sterling had contracted the company in September 2013 for demolition and digging work. (T.13).

Ms. Drew investigated whether Respondents had workers' compensation insurance coverage during any period around the claimed date of injury and found no coverage, "but there had been insurance coverage both before and after the injury on the Injured Workers' Benefit Fund case with several cancellations and terminations on and off during that time." (T.7). Ms. Drew stated that according to the National Council on Compensation Insurance (NCCI), most of the cancellations were due to non-payment of premiums, and a couple of the terminations were due to incomplete audits or other underwriting issues. (T.6-7; T.11-12). The Commission has designated the NCCI as its agent for the purpose of collecting proof of coverage information on Illinois employers who have purchased workers' compensation insurance from carriers.

Petitioner's Exhibit 2 included the NCCI certification dated February 25, 2020. The certification stated that a thorough search of their business records from 7/20/2005 through 1/14/2020 showed no policy information was filed demonstrating proof of workers' compensation insurance for Chris Koltzenburg, Cliff Koltzenburg, and Nancy Koltzenburg, doing business as K&N Excavating, specifically during 7/20/2005-6/29/2008, 2/12/2012-3/5/2013, 3/7/2014-3/30/2014, 4/1/2015-4/2/2015 and 4/1/2018-1/14/2020. There appeared to be some insurance coverage for parts of 2008 through 2009, and parts of 2010 through January 2011. Only Nancy Koltzenburg was listed as the primary insured and the governing class stated, "excavation and drivers" and "site preparation contractors." (Ex. 2).

Ms. Drew testified regarding Petitioner's Exhibit 3, the Illinois Department of Insurance's calculation of fines totaling \$205,259.04. This figure included 392 days of non-compliance (4/1/2008-6/30/2008, 1/15/2011-2/11/2011, 10/2/2012-10/15/2012, 2/11/2013-3/6/2013, 8/7/2013-3/31/2014, and 3/31/2015-4/3/2015), at \$500 per day, plus 392 days of "Premium Saved" at \$23.62 per day. (T.7-8; T.10; Ex. 3). Ms. Drew explained how she used a

premiums saved formula to reach \$23.62 per day: “[W]e look at the most recent worker’s compensation coverage that we have record of, and we look at the annual premium, divide that by 365 days to come up with that daily rate.” (T.12). The information that Ms. Drew referenced was not offered into evidence.

Ms. Drew further explained that she determined the dates of non-compliance and fines by comparing the period of no coverage, provided by the NCCI, with records from the Illinois Department of Employment Security. (Ex. 2). She found evidence that Respondents employed and paid workers during periods of no insurance coverage. (T.8-9). Petitioner’s Exhibit 2 contained a letter from the Illinois Department of Employment Security dated January 31, 2020. The letter noted the Illinois Workers’ Compensation Commission’s records request for employers Chris Koltzenburg, Cliff Koltzenburg, Nancy Koltzenburg and K&N Excavating, and stated that the department only had information for Nancy Koltzenburg, “as IDES has no employer filed quarterly wage reports for the other listed employers.” (Ex. 2). The wage reports named Nancy Koltzenburg and K&N Excavating, and indicated that wages were paid to several employees in parts of 2009 and from approximately June 2010 through December 2010. Cliff Koltzenburg’s name appeared on the 2010 forms with the title “Manager.” (Ex. 2).

There were additional records comprising Petitioner’s Exhibit 2 from the Illinois Department of Revenue dated February 14, 2020. A search of their records related to Chris Koltzenburg, Cliff Koltzenburg, and Nancy Koltzenburg, doing business as K&N Excavating, revealed a record of Illinois Withholding Income Tax Returns for the tax periods ending March 2006 through December 2007 for K&N Excavating. However, the department stated that these tax returns were destroyed. There was also evidence of Illinois Partnership Replacement Tax Returns for 2014 through 2016 for K&N Excavating. Cliff Koltzenburg and Chris Koltzenburg were listed as either partners, shareholders, or co-owners on the forms. There were other documents included in the Exhibit that indicated no other Illinois Withholding Income Tax Returns and no other Illinois Partnership Replacement Tax Returns from approximately 2005 through 2019. (Ex. 2).

Ms. Drew further added that she had sent a request to the Illinois Workers’ Compensation Commission’s self-insurance administration office and they verified that the business was not self-insured. (T.10). Petitioner’s Exhibit 2 had the certified record, dated January 21, 2020, from the Commission’s self-insurance administration office. The certification stated that no certificate of approval to self-insure was issued by the Illinois Workers’ Compensation Commission to owners Chris Koltzenburg, Cliff Koltzenburg and Nancy Koltzenburg DBA K&N Excavating. (Ex. 2).

Petitioner’s Exhibit 2 also showed a certified response, dated January 21, 2020, from the Illinois Secretary of State Department of Business Services as it pertained to Chris Koltzenburg, Cliff Koltzenburg, and Nancy Koltzenburg, individually and as owners of K&N Excavating, for the period of 7/20/2005-6/29/2008, 12/29/2009-2/28/2010, 1/16/2011-2/10/2011, 2/12/2012-3/5/2013, 8/8/2013-3/30/2014, 4/1/2015-4/2/2015, and 7/31/2017-Present. The document stated that an examination of their records did not disclose a corporation, either domestic or foreign, entitled K&N Excavating, as having been incorporated or licensed to transact business in Illinois at any time. (Ex. 2).

CONCLUSIONS OF LAW

The Commission adopts and incorporates the findings of fact herein, and first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they are engaged in certain enterprises or businesses which are considered extra-hazardous. The testimony and evidence showed that Respondents operated under the name K&N Excavating, and as their name suggested, the nature of the business included excavation, demolition and digging work. The Act considers this type of work, namely, “[t]he erection, maintaining, removing, remodeling, altering or demolishing of any structure,” and “[c]onstruction, excavating or electrical work” as extra hazardous. *820 ILCS 305/3(1) and (2)*. The Commission thus finds that Respondents were subject to the Act because they were engaged in a business considered extra-hazardous.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers’ compensation insurance. *820 ILCS 305/4(a)*. Section 9100.90(a) of the Commission’s Rules similarly provides that any employer subject to Section 3 of the Act shall insure payment of compensation required by Section 4(a) of the Act “by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation using an insurance carrier authorized, licensed or permitted to do such insurance business in Illinois.” *50 Ill. Adm. Code 9100.90(a)*. Section 9100.90(c)(3)(E) of the Rules further provides that a certification from a Commission employee stating that “an employer has not been approved as a self-insurer shall be deemed prima facie evidence of that fact.” *50 Ill. Adm. Code 9100.90(c)(3)(E)*. Section 9100.90(c)(3)(D) of the Rules also states that “[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact.” *50 Ill. Adm. Code 9100.90(c)(3)(D)*.

The Commission’s self-insurance administration office verified that no certificate of approval to self-insure was issued by the Illinois Workers’ Compensation Commission to owners Chris Koltzenburg, Cliff Koltzenburg and Nancy Koltzenburg DBA K&N Excavating at any time through January 21, 2020. The NCCI records also showed no proof of workers’ compensation insurance during some of Petitioner’s claimed dates of non-compliance as will be further detailed below. If the Commission determines:

[A]fter 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. *820 ILCS 305/4(d)*.

The Commission finds sufficient evidence in the record, particularly from the Illinois Department of Employment Security and the Illinois Department of Revenue, showing the

intertwined connection between the Koltzenburgs, K&N Excavating, and their business operations during periods with no proof of workers' compensation insurance coverage. Notwithstanding, Petitioner failed to provide evidence of reasonable notice of the January 15, 2026 hearing to Cliff Koltzenburg and Nancy Koltzenburg. As such, any penalty so assessed will be limited to Chris Koltzenburg. The evidence demonstrated that Mr. Koltzenburg was given reasonable notice of the insurance compliance hearing, and he had the opportunity to either show that there was compliance with Section 4(a) of the Act or explain why compliance was not accomplished. However, Mr. Koltzenburg failed to appear on January 15, 2026 and the matter proceeded ex parte. *50 Ill. Adm. Code 9100.90(c)(3)(A)*.

The Commission Rules state that an employer's failure to appear at the hearing, where no continuance was obtained prior to the hearing, shall constitute a default and shall result in a finding that there has been a knowing and willful failure of the employer to insure the employer's liability to pay compensation in accordance with Section 4(a) of the Act, and an assessment of penalties under Section 4(d) of the Act. *50 Ill. Adm. Code 9100.90(c)(1)(C)(v)*.

Based on the foregoing, the Commission finds the assessment of penalties warranted against Respondent Chris Koltzenburg, individually and as owner of K&N Excavating, for the following dates of non-compliance evidenced by the NCCI records: 4/1/2008-6/29/2008, 10/2/2012-10/15/2012, 2/11/2013-3/5/2013, 3/7/2014-3/30/2014 and 4/1/2015-4/2/2015, or 153 days.

Finally, Petitioner failed to cite and provide authority with respect to their request for an additional premium saved penalty. The Commission finds the testimony and evidence wholly lacking in this regard, and as a result, Petitioner is not entitled to a further award of penalties against the Respondents.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Chris Koltzenburg, individually and as owner of K&N Excavating, pay to the Illinois Workers' Compensation Commission the sum of \$76,500.00, representing 153 days of non-compliance with the Act and Rules at \$500.00 per day, as provided for in 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 on 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. Respondents 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

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

JANUARY 27 2026

CAH/pm
O: 1/15/26
052

/s/ Christopher A. Harris

Christopher A. Harris

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC017880
Case Name	Daniel J. Marquardt v. LaGrange Crane Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0024
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	George Jasinski
Respondent Attorney	Robert M. Harris, Kenneth J. Barrish

DATE FILED: 1/27/2026

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOKS)

☐ 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: Causal connection, medical expenses, TTD, and PPD	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL J. MARQUARDT,
 Petitioner,

vs.

NO: 13 WC 017880

LA GRANGE CRANE SERVICES,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, permanent disability, and "other: credibility," 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.

I. Causal Connection

The Commission observes that the Arbitrator found that Petitioner's current condition of ill-being of the low back is causally related to the April 20, 2013 work accident. However, after a review of the record in its entirety, the Commission views the evidence differently and finds Petitioner's condition of ill-being, is causally related to the April 20, 2013 work accident through June 24, 2013 and not thereafter.

The treating medical records provide that on June 6, 2013, Dr. Mekhail released Petitioner back to work without restrictions. Thereafter, on June 24, 2013, Petitioner followed up with Dr. Mekhail, who noted a negative straight leg raise test and that Petitioner was "essentially back to normal." As such, Dr. Mekhail placed Petitioner at maximum medical improvement (hereinafter "MMI"). Moreover, the record indicates that after Dr. Mekhail's finding of MMI on June, 24, 2013, Petitioner continued to work full duty work as an operating engineer/crane operator and did not seek any treatment for his low back condition for 31 months. Petitioner did not return for

medical treatment until January 28, 2016. On January 28, 2016, Dr. Mekhail noted that Petitioner presented with new symptoms on the right side and that he had previously treated Petitioner for left-sided symptoms. Moreover, Petitioner testified that about 30 months after he was discharged at MMI, he returned to Dr. Mekhail on January 28, 2016 and told Dr. Mekhail that he had been doing well until six months ago when he started having pain down the right leg and that the right leg complaint was a new symptom.

The Commission also finds that RX 2, containing surveillance activity on various dates from April 26, 2013 through June 15, 2013, supports Dr. Mekhail's full duty release on June 6, 2013 and MMI discharge date of June 24, 2013 as the surveillance shows Petitioner performing activities of daily living without pain behavior.

In addition, on February 24, 2019, Dr. Mekhail opined that to a reasonable degree of medical and surgical certainty that the new symptoms that Petitioner presented with on January 28, 2016 were unrelated to the alleged injury on April 20, 2013. Respondent's IME Dr. Phillips testified that he agreed with treating physician, Dr. Mekhail's opinion that Petitioner had reached MMI as of June 24, 2013 for the April 20, 2013 work accident.

Finally, the Commission finds that Dr. Sampat's causal connection opinion is unpersuasive because his narrative report implies a continuation of symptoms after the work accident, despite a 31-month gap in medical treatment. Further, Dr. Sampat's narrative report is ambiguous as to whether he had reviewed Dr. Mekhail's prior treating records.

Therefore, based on the totality of the record, the Commission finds that Petitioner's condition of ill-being of the low back is related to the April 20, 2013 work accident through June 24, 2013 and not thereafter.

II. Medical Expenses

For the reasons discussed above, the Commission modifies Arbitrator's Decision and finds that Petitioner's condition of ill-being of the low back is causally related to the April 20, 2013 work accident through June 24, 2013 and not thereafter. As such, the Commission also modifies the Arbitrator's award of medical expenses and vacates the award of reasonable and necessary medical services incurred after June 24, 2013. The Commission orders that Respondent shall pay related, reasonable, and necessary medical bills incurred through June 24, 2013 pursuant to Sections 8(a) and 8.2 of the Act.

III. Temporary Disability

The Commission affirms the Arbitrator's award of temporary total disability (TTD) benefits for the period of April 23, 2013 through June 6, 2013 because Dr. Mekhail released Petitioner to full duty work on June 6, 2013 and Petitioner in fact returned to work on June 10, 2013.

However, the Commission modifies rate at which TTD benefits were awarded. The Commission observes that the Arbitrator calculated TTD based on an average weekly wage

(AWW) of \$1,980.00. However, the Commission notes that the parties stipulated to an AWW of \$1,920.00 on the Request for Hearing Form. Using the stipulated AWW of \$1,920.00, the Commission finds the correct TTD rate is \$1,280.00. Accordingly, the Commission modifies the Arbitrator's Decision and awards TTD at rate of \$1,280.00 for the affirmed TTD period of April 23, 2013 through June 6, 2013.

IV. Permanent Disability

Finally, the Commission also modifies the Arbitrator's Decision with respect to the issue of permanent partial disability. For the reasons discussed above, the Commission finds that Petitioner's condition of ill-being is causally related to the April 20, 2013 work accident through June 24, 2013 and not thereafter. Accordingly, the Commission also modifies the Arbitrator's award of permanent disability and finds Petitioner entitled to permanent partial disability benefits based on the following evaluation of the five factors outlined in Section 8.1b of the Act.

Regarding factor (i) Level of Impairment, the Commission gives no weight to this factor because an AMA rating is not in evidence.

Regarding factor (ii) Occupation, the Commission places great weight on this factor because Petitioner was able to return to his full duty job as an operating engineer/crane operator.

Regarding factor (iii) Age, the Commission gives some weight to this factor because Petitioner was 53 years old at the time of the accident and has less years to work with his low back condition.

Regarding factor (iv) Earning Capacity, the Commission gives no weight to this factor as there is no evidence in the record of diminished earnings.

Regarding factor (v) Disability, the Commission places greater weight on this factor, noting Petitioner underwent conservative treatment for his low back injury which had resolved as of June 24, 2013 at which time Dr. Mekhail noted Petitioner was essentially back to normal and did not report pain or tingling at the last office visit.

Therefore, based on the above factors and the record taken as a whole, the Commission modifies the Arbitrator's Decision to find that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the person as a whole or \$35,627.50 (50 weeks at a PPD rate of \$712.55) pursuant to Section 8(d)(2) as result of the work injury on April 20, 2015.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 5, 2025 is hereby modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay temporary total disability benefits of \$1,280.00 per week for the period of April 23, 2013 through June 6, 2013, a period of 6-3/7ths weeks, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay related, reasonable and necessary medical services incurred through June 24, 2013 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of \$712.55/week for a total of 50 weeks representing 10% loss of use of the person as a whole pursuant to Section 8 (e) of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$73,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JANUARY 27 2026

O: 01/21/26

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	13WC017880
Case Name	Daniel J. Marquardt v. LaGrange Crane Services
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	George Jasinski
Respondent Attorney	Robert M. Harris, Kenneth J. Barrish

DATE FILED: 5/5/2025

/s/ William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 29, 2025 4.07%

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**

DANIEL MARQUARDT

Employee/Petitioner

v.

LAGRANGE CRANE AND SERVICE

Employer/Respondent

Case # **13** WC **017880**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **2/10/2025**. 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 **4/22/2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$102,960.00**; the average weekly wage was **\$1,980.00**.

On the date of accident, Petitioner was **53** years of age, *married* with **0** dependent children.

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

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

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

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

ORDER

RESPONDENT SHALL PAY TO PETITIONER'S ATTORNEY REASONABLE AND NECESSARY MEDICAL SERVICES, PURSUANT TO THE MEDICAL FEE SCHEDULE OF \$3,822.00 (PARKVIEW ORTHOPAEDICS); \$26,035.13 (MIDWEST OPERATING ENGINEERS WELFARE FUND), AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT.

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF \$1320.00/WEEK FOR 6 WEEKS COMMENCING FROM 4/23/13 THROUGH 6/6/2013, AT WHICH TIME PETITIONER WAS RELEASED TO MMI BY DR. ANIS MEKHAIL, TOTALING \$7,920.00, BASED ON PETITIONER'S AVERAGE WEEKLY WAGE OF \$1,980.00.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS IN THE AMOUNT OF \$712.55 FOR 90 WEEKS BECAUSE THE LUMBAR INJURIES CAUSED THE 18% LOSS OF A PERSON AS A WHOLE, SUSTAINED IN THE APRIL 20, 2013, INCIDENT.

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

MAY 5, 2025

**Daniel Marquardt V. Lagrange Crane and Service
13WC017880**

FINDINGS OF FACT

Daniel Marquardt, hereinafter referred to as “Petitioner”, testified on February 10, 2025 in association with his work-related injury of April 20, 2013.

Petitioner testified that he is currently 65 years old, married with adult children and is currently retired. Petitioner was employed as a Local 150 Operating Engineer and was a High School graduate. (Tr.41).

Petitioner described the nature of his employment as an Operating Engineer, including the physical nature of the job as well as the operation of the crane. Petitioner testified that he began working for LaGrange Crane in approximately 1996. (Tr.43-45).

Petitioner testified that prior to the date of the incident, April 20, 2013, the Petitioner was of good health and had never suffered any type of back injury or back problem. Petitioner further testified that he had previously undergone a shoulder repair for a full tear, and had undergone two knee surgeries on his left leg. Petitioner testified that he made a good recovery from his shoulder surgery, however the Petitioner did not make a good and perfect recovery from his left knee surgeries. Petitioner testified that his left knee would occasionally bother him, and while it would not affect his ability to do his job, on occasion he would have a day or two where he would have pain and soreness, and possibly a slight limp, however that would not prevent the Petitioner from performing his job. Petitioner further testified that he had been advised or became aware that he walked with a limp subsequent to his second knee surgery and that he had been advised by other individuals who had noticed the limp on multiple occasions. (Tr. 46-49).

Petitioner testified that on the date of the incident, April 20, 2013, he arrived to the job site he pulled onto the property lot, sat in his car, and drank some coffee until approximately 6:30 a.m. (Tr. 51). Petitioner testified that when he arrived at his place of employment the gate,

which is the gate was closed. Petitioner further testified that he has never closed the gate. (Tr. 51-52). Petitioner testified that the gate is very heavy, and approximately 15 feet high. Petitioner testified that in order to get the machines out of the yard, he would have to open the gate, and since he was the first person on the scene that date, he was the one to open the gate. Petitioner testified that he may have walked into the building to get the key to unlock the gate, if the gate had been locked, but eventually Petitioner had to move the gate. Petitioner then described and demonstrated how he opened the gate, his hands were extended around stomach high to waist high, spread out about a foot and a half. Petitioner testified that he opened the gate far enough so that the equipment could pass through. (Tr. 53-55).

Petitioner testified that the near the end of pushing the gate he felt a twinge, pop, not like a terrible pain but he definitely felt something. Petitioner testified he heard it inside of his body and that it was not good whatever it was, located in his lower back. Petitioner does not recall if he gestured in any way or grabbed himself, however he may have reached his hand out. Petitioner then walked to the door, approximately 25 feet away and went inside. (Tr. 56-57).

Petitioner testified that once inside the shop he noticed that pain had begun. The pain did not hurt from the time he felt the twinge/pop and walked over to the door; however, it started to burn and radiate down his leg and became worse and worse which he noticed by the time he was inside the shop. (Tr.58-59). Petitioner indicated that as he experienced the pain he was bent over and felt the pain along his back side from his groin area down his leg to his knee. The pain was described as a number 10 pain and it was something that the Petitioner had never felt before. Petitioner further testified that he felt hunched over and that as he would straighten up the pain would become unbearable. The pain lasted for perhaps 3 to 5 minutes. Petitioner testified that he was able to work through the end of the day and did not feel good, but did not experience any pain like the initial pain when he was bent over. (Tr. 58-62).

Petitioner reported the incident on the following Monday, which would have been his next day on the job, and he reported it to Lenny (Tr. 65). On the Monday when he reported the incident, he completed a short job and then was sent to a clinic by his employer. (Tr. 66).

Petitioner further testified that he was eventually sent by Third Coast Underwriter to Dr. Andreshak. Petitioner was not able to continue with Dr. Andreshak because his workmen's comp medical benefits had been terminated by Third Coast Underwriting, so Petitioner followed up on his own with Parkview Orthopedics, and specifically Dr. Anis Mekhai who ordered physical therapy for the Petitioner. (Tr. 66-70).

Petitioner completed the therapy under the orders of Dr. Mekhail and was diagnosed with a herniated disc at L4-L5. (Tr. 70). Dr. Mekhail further ordered an MRI which was performed on May 6, 2013. (Tr. 70-71). Petitioner continued with physical therapy and did benefit from physical therapy as it reduced the pain and tingling that he was experiencing. On June 24, 2013 Petitioner had a final visit with Dr. Mekhail who placed Petitioner at MMI. Petitioner was cleared to return to work on that date, however was unable to return to work until the second week of July. (Tr. 71-72)

Petitioner continued to work and for a period of approximately of 2 years was capable of completing his employment, however as time progressed his back began hurting again. The Petitioner testified that initially the pain was going down his leg and up and into his groin and was manageable at first, he would treat with Ibuprofen, however because of the type of job that he was doing the Petitioner was able to sit down in his crane and lean forward which created relief for the type of pain the Petitioner was experiencing. The Petitioner testified that standing, walking, and lifting equipment on the job would accelerate the pain and discomfort. Petitioner testified that he continued to treat with more Ibuprofen, however his condition was not improving and he returned to Parkview Orthopedics to treat with Dr. Chintan Sampat. Petitioner testified that he realized that by taking so much Ibuprofen he was not benefiting his health. He knew that when he was initially off work he was taking Tramadol, getting physical therapy and for approximately 3 months not doing anything strenuous and so his pain was minimized at the point where Dr. Mekhail released him to return to work. While working, the Petitioner testified that he was sitting his cab which did not cause him discomfort. (Tr.76-78).

As Petitioner began treatment with Dr. Sampat, he initially treated with conservative measures including multiple injections, which did not help, and eventually underwent a surgical

decompression for herniated discs from L3-L5. Petitioner testified that he felt the surgery was beneficial and that he received good relief and that he was capable of returning to work. Petitioner was eventually released to full duty employment and determined to be at Maximum Medical Improvement in April of 2019. Petitioner did return to work and subsequently retired. Petitioner testified that since retiring he has discontinued all the twisting, bending, pushing, and pulling which was causing his discomfort, and further underwent a rigorous back-core-abdomen strengthening program which was beneficial in his improvement. Petitioner testified that as a part of the strengthening program he was re-educated as to how to perform daily activities without aggravating his condition. Currently he exercises three to four times weekly, and his health has been good. (Tr.78-79).

TESTIMONY OF JUDITH MOONCOTCH:

Respondent employer, Judith Mooncotch testified that she is the President and Owner of LaGrange Crane and Service. In addition to being the owner she testified that she was in charge of loss control, insurance, payroll, operations and pretty much everything, and that she was the point of contact between any of the employees and staff as well as with the insurance companies. (Tr. 12).

Mooncotch testified that she was involved with the surveillance videos (Rx. 1&2) that has been offered into evidence.

Mooncotch testified that the camera server is in her office and there is a network throughout her office parking lot, the outside yard and inside the shop with 32 cameras set up. She further testified that she has provided the court with 26 clips which she put together. (Tr. 14-16). Mooncotch described how she reviewed the camera system with all the cameras showing up on squares, and then she bookmarked a few minutes before the incident and a few minutes after the incident. Mooncotch testified that upon reviewing the video she saw prior to the Petitioner opening the gate that he was limping and grabbing his leg and then she stated that she saw the same thing, the same type of limp after he opened the gate. Mooncotch described the type of

work that the Petitioner would typically do and further testified that the Petitioner returned to work approximately a month or two after his doctor released him. Mooncotch testified that the Petitioner returned to work and continued to work for LaGrange Crane for approximately one and half years. Mooncotch testified that the Petitioner said he injured himself opening the gate, no twisting or anything like that, just pushing the gate. She further testified that she had an opportunity to observe the Petitioner prior to April 20, 2013, and did not notice anything when he was working, he seemed to have a normal walk. (Tr. 20).

On cross examination Mooncotch testified that she oversees the video and that the video was operating the day before the incident, as well as weeks and months before the incident. When asked as to whether or not Mooncotch reviewed prior video, specifically if she saw any video of the Petitioner, limping, walking unusually, holding his back, or doing something that would suggest an injury, "I don't review the video like that." When asked "Don't you think that would be important to look perhaps as to how he was acting a day or week before to supplement and support your theory? Don't you think that is critical?" And her response was, "No, I saw him get out of his car in the video, he walked with a limp." When asked if she reviewed any video of the Petitioner taken prior to the date of the accident, her response was "no." When further interrogated, "So you never thought it might be important to take a look and see if he had been limping a day or two before to support your theory that he was hurt before he tried to open the gate?" Her response was, "no". When asked if that information would be critical, she said, "no I saw him walking in the morning with a limp." (Tr.26-29).

Mooncotch testified that she was unaware of how heavy the gate was and that no one was instructed to close the gate, as it was not yet implemented for use as they were waiting on a motor. (Tr.31-32). Mooncotch testified that workers get their vehicles out of the yard, by going through the gate and to her knowledge there were no times when the gate was closed, however it was closed on the date when the Petitioner went to open the gate. (Tr.32-34).

SURVEILLANCE VIDEO:

Respondent offered videos (RX.1,2) into evidence which is 26 clips of surveillance video.

The video Clips show the Petitioner exiting his vehicle and limping at various times after opening the gate.

DR. ANIS MEKHAIL:

Dr. Mekhail medical report, (Rx. 3) indicates that he first treated the Petitioner on May 28, 2013, with a history of sliding open a large security gate and twisting his back on April 20, 2013. Dr. Mekhail further testifies that an MRI performed on May 6, 2013 demonstrated a left L3-L4 herniated disc which Mekhail believed was the cause of the Petitioner's symptoms. At that point, Dr. Mekhail recommended Work Conditioning. He again saw the Petitioner on June 6, 2013 who indicated that his condition had improved and Dr. Mekhail indicated he would release the Petitioner to full duty, without restrictions, upon completion of his Work Conditioning session. Mekhail again saw the Petitioner on June 24, 2013, at which time he adjudicated that the Petitioner was at maximum medical improvement, and further offered the opinion, based upon a reasonable degree of medical and surgical certainty, that the Petitioner suffered from a L3-L5 herniated disc as a result of the work-related injury on April 20, 2013. (RX. 3).

DR. CHINTAN SAMPAT:

Dr. Chintan Sampat narrative medical report (RX. 4) indicates that the Petitioner presented to him after sustaining a work-related injury on April 20, 2013, with a history of lifting a heavy gate with subsequent findings of spinal stenosis and lumbar disc herniation from L3 to L5. Dr. Sampat testified that it became necessary for the Petitioner to undergo a surgical decompression which was performed on February 7, 2018, based upon findings of low back pain which was radiating down to lower extremities. Dr. Sampat reports that the Petitioner had tried conservative treatment measures and eventually underwent the surgical decompression with good relief of his symptomology. Dr. Sampat then offered the opinion that the lifting of heavy objects is a very competent cause resulting in a lumbar disc herniation and lumbar stenosis and corresponds well with his history of lifting a heavy oversized gate and sliding it open. Dr. Sampat testified that the Petitioner's prognosis is good and when he was last seen on April 16, 2019 he was having on and off lower back pain, but that the pain in the Petitioner's lower extremities was better, and at that juncture Dr. Sampat felt that the Petitioner could return to working at his current job, finding him at maximum medical improvement as of April 16, 2019. Dr. Sampat indicated that his opinions were based upon a reasonable degree of medical and surgical certainty. (Rx. 4).

VIDEO REVIEW LOG BY RESPONDENT'S SECTION 12 WITNESS DR. JESSE BUTLER:

The Respondent offered into evidence the deposition of Dr. Jesse Butler, (RX. 5). Dr. Butler was provided video evidence of the Petitioner taken on both April 15th and April 16, 2013; at which time Dr. Butler testified that the petitioner is seen walking normally. (RX.5 pg. 14). Dr. Butler further opinions on the date of this incident, April 20, 2013, the Petitioner is seen limping as well as walking normally both prior to and after opening the gate. (RX. 5 pgs. 14-15).

Dr. Butler further testified that based on his observation of the video he “didn’t really look like he sustained any injury during that process at all”. When describing the alleged work accident. (RX. 5, pg. 15).

Dr. Butler further testified that his opinions and set forth in his deposition were bases solely on his review of the video. (Rx. 5, pg. 19).

Arbitrator takes note that the Petitioner was not provided a copy of the video prior to the Deposition of Dr. Butler.

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 and the record of the proceeding and the material that has been officially noticed. 820ILCS305/1.1(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. *McDonald vs. Industrial Commission*, 39IL2nd396 (1968); *Swift v. Industrial Commission*, 52IL2nd490(1972). In the case at hand, the Arbitrator observed the Petitioner during the hearings and finds his testimony to be credible. Arbitrator compared Petitioner’s testimony with the totality of evidence submitted and finds the Petitioner credible.

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

The Arbitrator finds as follows:

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law. To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. (*O'dett v. Industrial Commission*, 79IL2nd249, 253 (1980), including that the accidental injury arose out of and incurred during the course of employment. (*Horvath v. Industrial Commission*, 96IL2nd349(1983) and that there is some causal relationship between the employment and his injury. (*Caterpillar Tractor Company v. Industrial Commission*, 129IL2nd52,63(1998). Decisions of the Arbitrator shall be based exclusively on the evidence and the record of the proceeding and the material has been officially noticed. 820ILCS305/1.1(e).

The Petitioner testified that when he arrived on his employer's property he was required to open the large sliding gate in order to enter the premises and remove the equipment on which he would be working with. The video evidence supports the Petitioner's testimony that he was sliding open a heavy gate.

Based upon the foregoing, along with Petitioner's credible testimony that opening said gate caused him to suffer a work accident, the Arbitrator finds that the accident that occurred arose out of and in the course of Petitioner's employment by Respondent.

(F) Whether Petitioner's current condition of ill-being is causally related to the injury?

The Arbitrator finds as follows:

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law. To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of

the evidence, all of the elements of his claim. (*O'dett*), Page 249. 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 cause of the factor, as long as it was *(a) causative factor and resulting in the condition of illbeing*. Even if the claimant had a pre-existing, 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 roll in aggravating his pre-existing condition. (*Sisbro, Inc. v. Industrial Commission*, 207IL2nd193,205,797NE2nd655, 278ILDec70, 2003.)

To establish medical causation, claimant is not required to prove that the hazards to which he was exposed constitutes the sole cause of the injury or even the principal cause. It is sufficient if the work activity was a causative factor. This is true if the claimant had a pre-existing condition which was aggravated or accelerated by his employment. (See *Sisbro, Inc.*)

Arbitrator finds that the Petitioners condition of ill-being is causally related to his work injury.

Prior to the subsequent accident, the Petitioner had never received medical treatment for an injury to his lumbar spine. The Petitioner testified that his only previous medical treatment consisted of surgeries to his shoulder as well as to his left leg. The opinions of Petitioner's treating physicians, Dr. Anis Mekhail, (PX. 3) and Dr. Chintan Sampat, (PX. 4), concluded that the Petitioner suffered a herniated disc at L3 to L5 as a result f alleged work-related injury. (PX.3) (PX. 4).

Arbitrator gives more weight to the conclusions of Dr. Mekhail and Dr. Sampat then that of the Respondent's Section 12 Examiner's Dr. Frank Phillips and Dr. Butler.

Dr. Phillips testified that Petitioner descried his accident history as when he opened a large gate, and as it slid open, he developed severe back and radiating pain" (RX 6, p. 14). Dr. Phillips testified that Petitioner complained of low back pain and left groin pain when he saw Dr. Andreshak on

May 1, 2013 (RX 6, p. 15). There was nothing in that report indicating any right-sided complaints or symptoms (RX 6, p. 15). Dr. Phillips testified that Petitioner gave a history of sliding open a large security gate and twisting his back when he presented to Dr. Mekhail on May 28, 2013, but Petitioner failed to mention to Dr. Phillips he twisted his back (RX 6, p. 17). Arbitrator does not find an omission affects the credibility of the Petitioner. But relies on Petitioners live testimony under oath, at the hearing which is consistent with his injury and the conclusions drawn by his treating physicians.

Arbitrator gives little weight to the conclusions reached by Dr. Butler, who reached his conclusions based solely on the surveillance videos entered in evidence which the Arbitrator finds as inconclusive. (RX. 1,2).

Based upon the foregoing, along with Petitioner's credible testimony concerning his back condition, as well as the opinions of the Petitioner's treating physicians and surgeons and the objective findings, the Arbitrator finds that the causal connection between the work accident and Petitioner's current back condition, with the Petitioner reaching maximum medical improvement on April 16, 2019.

(J) Whether the medical services provided to the Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services.

The Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. 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 Commission*, 201ILAPP3d880,888(2ndDistrict 1990).

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds the Respondent has not paid for said treatment. The Arbitrator finds that the Petitioner reached maximum medical improvement for the April 20, 2013 on April 16, 2019.

Accordingly, the Arbitrator finds that the medical bills which were satisfied by Petitioner's union, Midwest Operating Engineers Welfare Fund totaling \$26,035.13, (PX. 5), as well as the unpaid balance of the Parkview Orthopaedic bills totaling \$3,822.00, (PX. 6), were incurred or causally related to the aforementioned incident. As such, the Arbitrator orders the Respondent to pay the Petitioner's the reasonable and necessary medical expenses incurred through April 16, 2019 in connection with the care and treatment of his causally related condition to his back pursuant to Section 8 and 8.2 of the Act.

(K), What temporary benefits are in dispute?

The Arbitrator finds as follows:

The Parties stipulated and the Petitioner testified that his average weekly wage was \$1,920.00, and that he did not receive temporary total disability benefits from the date of his accident until he was released to maximum medical improvement by Dr. Anis Mekhail on June 6, 2013, resulting in 6 weeks of temporary total disability due to the Petitioner.

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

The Arbitrator finds as follows:

Consistent with the Illinois Worker's Compensation Act, the Arbitrator is to base the permanency determination upon the following factors:

- (i) The reported level of impairment pursuant to Subsection (a)(e.g., the AMA Rating);
- (ii) The occupation of the injured employee;
- (iii) The age of the employee at the time of the injury;
- (iv) The employee's future earning capacity;
- (v) Evidence of disability corroborated by the treating medical records.

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

With regard to subsection (i) of Section 8.1(b)(b), the Arbitrator notes that no party introduced an impairment rating at trial, and as such no weight is given to this factor.

With regard to subsection (ii) of Section 8.1(b)(b), the Arbitrator notes that the Petitioner was employed as an operating engineer, which is a heavy-duty job. Petitioner returned to work fully duty. Given the heavy nature of the work, the Arbitrator gives weight to this factor.

With regard to subsection (iii) of Section 8.1(b)(b), the Arbitrator notes that Petitioner was 53 years old on the date of his accident. Given the remaining length of his work life, the Arbitrator gives weight to this factor.

With regard to subsection (iv) of Section 8.1(b)(b), the Arbitrator concludes that the Petitioner was capable of working with no restrictions, and as such is capable of making the

same amount of wages as Petitioner was previous to his injury. As Petitioner's injury did not affect his earning capacity, the Arbitrator assigns weight to the lack of effect Petitioner's injuries had on his wages.

With regard to subsection (v) of Section 8.1(b)(b), the Arbitrator notes Petitioner's medical records indicate Petitioner sustained a herniated disc as a result of the April 20, 2013 injury. The Arbitrator assigns weight to the Petitioner's recovery and continued ability to perform his job after recovery.

Based upon the above factors, and the record taken as a whole, the Arbitrator finds that the Petitioner suffered permanent partial disability to the extent of 18% loss of use of a person as a whole, pursuant to Section 8(d)(2) of the Act for the injuries sustained to his back. Respondent shall pay Petitioner Permanent Partial Disability Benefits of \$712.55/week for 90 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC022494
Case Name	Brian Wernle v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0025
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 1/27/2026

/s/ Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN WERNLE,

Petitioner,

vs.

NO: 22 WC 22494

STATE OF ILLINOIS,
 ILLINOIS DEPARTMENT OF
 TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 12, 2025 is hereby affirmed and adopted.

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

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

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

JANUARY 27 2026

CAH/tdm

d: 1/15/26

052

/s/ *Christopher A. Harris*

Christopher A. Harris

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Marc Parker*

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC022494
Case Name	Brian Wernle 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	5
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 8/12/2025

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



AUGUST 12 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

/s/ William Gallagher, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 12, 2025 3.97%

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Brian Wernle
Employee/Petitioner

Case # 22 WC 22494

v.

Consolidated cases: n/a

State of IL/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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on June 30, 2025. By stipulation, the parties agree:

On the date of accident, August 10, 2022, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$84,749.08; the average weekly wage was \$1,629.79.

At the time of injury, Petitioner was 61 years of age, married, with 0 dependent child(ren).

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

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$5,988.12 for other benefits, for a total credit of \$0.00. The parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$977.87 per week for 125 weeks, because the injury sustained caused the 25% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from June 18, 2024, through June 30, 2025, and shall pay the remainder of the award, if any, in weekly payments.

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

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



William R. Gallagher, Arbitrator

ICArbDecN&E p. 2

AUGUST 12, 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 August 10, 2022. According to the Application, Petitioner was "Lifting air hammer drill on to trailer" and sustained an injury to his "Back, body as a whole" (Arbitrator's Exhibit 2). At trial, Petitioner and Respondent stipulated medical and temporary total disability benefits had been paid and that the only disputed issue was the nature and extent of disability (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a highway maintainer and testified that on August 10, 2022, he was in the process of loading an air drill jackhammer on to a trailer. When he did so, he experienced an onset of pain in his low back on the left side. Petitioner stated he had previously undergone low back surgery approximately 20 years ago, but he had totally recovered, had no ongoing symptoms and was working without restrictions.

Following the accident, Petitioner was seen in the ER of St. Joseph's Hospital on August 10, 2022. At that time, Petitioner provided a history of the accident and complained of low back pain. A CT scan was performed which revealed a prior laminectomy at L5-S1, bilateral facet arthropathy at L3-L4, L4-L5 and L5-S1, and a mild disc bulge at L4-L5. Petitioner was diagnosed with midline low back pain with left sided sciatica. He was prescribed medication and directed to follow up with his primary care physician (Petitioner's Exhibit 3).

Petitioner was subsequently evaluated by Dr. Andrew Guggin, his family physician, who saw him on August 12, 2022. When seen by Dr. Guggin, Petitioner informed him of the accident and complained of low back pain with pain radiating into his left leg. Dr. Guggin recommended physical therapy and later referred him to Dr. Kevin Rutz, an orthopedic surgeon (Petitioner's Exhibit 4).

Dr. Rutz evaluated Petitioner on August 18, 2022. At that time, Petitioner advised Dr. Rutz of the accident of August 10, 2022, and complained of low back pain with radiation into the bilateral buttocks as well as pain/cramping in his left calf. Dr. Rutz ordered an MRI scan of Petitioner's lumbar spine (Petitioner's Exhibit 5).

The MRI scan was performed on August 23, 2022. According to the radiologist, the MRI scan revealed a circumferential disc bulge at L3-L4 causing moderate bilateral foraminal stenosis, a circumferential disc bulge at L4-L5 with a midline annular tear/fissure with a small extruded fragment contributing to bilateral foraminal stenosis, and a left sided microdecompression changes at L5-S1 (Petitioner's Exhibit 6).

Dr. Rutz saw Petitioner on August 23, 2022, and reviewed the MRI scan. His interpretation of the MRI was consistent with that of the radiologist. Dr. Rutz diagnosed Petitioner with low back pain with radiculopathy. Dr. Rutz treated Petitioner's low back condition conservatively with physical therapy and epidural steroid injections. Petitioner had continued to work, but within a 30 pound lifting restriction. Petitioner's low back condition did not improve to any significant degree and Dr. Rutz decided to proceed with surgery (Petitioner's Exhibit 5).

Dr. Rutz performed surgery on Petitioner's lumbar spine on July 28, 2023. The procedure consisted of anterior lumbar discectomies and total disc arthroplasties at L3-L4 and L4-L5 (Petitioner's Exhibit 5).

At the direction of Respondent, Petitioner was examined by Dr. Benjamin Crane, an orthopedic surgeon, on August 10, 2023. In connection with his examination of Petitioner, Dr. Crane reviewed medical records and diagnostic studies provided to him by Respondent. Dr. Crane diagnosed Petitioner with left lumbar radiculopathy secondary to facet arthropathy which was causally related to the accident of August 10, 2022. Dr. Crane also opined that the medical treatment provided to Petitioner to date, including the total disc arthroplasties at L3-L4 and L4-L5, was appropriate and medically necessary (Respondent's Exhibit 2).

Following surgery, Petitioner continued to be treated by Dr. Rutz. Petitioner continued to experience symptoms in his left lower extremity and left groin. When Dr. Rutz saw Petitioner on November 7, 2023, Petitioner still had some left lower extremity symptoms. Dr. Rutz ordered physical therapy and authorized Petitioner to return to work, but with a 40 pound lifting restriction (Petitioner's Exhibit 5).

When Dr. Rutz saw Petitioner on January 16, 2024, Petitioner advised physical therapy was helping. Dr. Rutz directed Petitioner to continue physical therapy and the 40 pound lifting restriction remained in effect (Petitioner's Exhibit 5).

Dr. Rutz again saw Petitioner on February 20, 2024. At that time, Petitioner advised he had not been permitted to return to work because of the 40 pound lifting restriction. Dr. Rutz opined Petitioner was improved and directed him to continue physical therapy for another month. He also released Petitioner to return to work at full duty effective March 20, 2024 (Petitioner's Exhibit 5).

Dr. Rutz saw Petitioner on April 23, 2024. At that time, Petitioner advised he had returned to work, but was sore at the end of the workday, especially when using a jackhammer. Dr. Rutz authorized Petitioner to continue to work at full duty, but to avoid using a jackhammer. Dr. Rutz last saw Petitioner on June 18, 2024. At that time, Petitioner advised he had been working with the only restriction being no use of the jackhammer. Dr. Rutz imposed a permanent restriction of no use of a jackhammer and opined Petitioner was at MMI (Petitioner's Exhibit 5).

Because of some mid-thoracic symptoms, Petitioner was treated by Dr. Patricia Hurford (who had previously administered low back steroid injections) between July 17, 2024, and November 14, 2024. Dr. Hurford treated the condition conservatively with injections and physical therapy. When she last saw Petitioner on November 14, 2024, she noted he was slowly progressing (Petitioner's Exhibit 8).

Petitioner testified that when he attempted to return to work with the restriction of no use of a jackhammer, Respondent could not permanently accommodate that restriction. Petitioner began a job search and also consulted Tim Kaver, a vocational rehabilitation expert (Petitioner's Exhibits 15 and 16).

Petitioner was subsequently able to secure employment with Respondent driving an emergency patrol vehicle. Petitioner testified he usually drives the vehicle 80 to 180 miles per day. Petitioner agreed he was able to perform his job duties, but that driving the truck causes some aggravation of his symptoms. In spite of the improvement Petitioner had following surgery, he stated that he still experiences back pain and the mobility in his back is reduced which causes him to have issues with bending. Sitting for

long periods of time also aggravates his symptoms. Petitioner continues to take over-the-counter pain medication.

Petitioner's recreational activities have also been adversely impacted. Playing golf and riding his motorcycle have been affected. Petitioner stated he has problems holding his grandchildren because of his back issues and he no longer volunteers at his church because of the amount of standing it requires.

Conclusion of Law

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 25% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

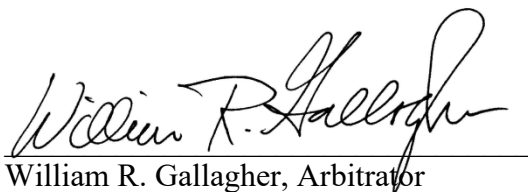
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time of the accident, Petitioner worked for Respondent as a highway maintainer. Because of the permanent restriction of no use of a jackhammer, Petitioner was not able to return to that job on a permanent basis. However, Petitioner was able to secure another job with Respondent, driving an emergency patrol vehicle. The Arbitrator gives this factor moderate weight.

At the time of the accident, Petitioner was 61 years old. Petitioner anticipates retiring some time in 2026. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the accident, Petitioner sustained an injury to his lumbar spine which ultimately required disc replacement surgery at L3-L4 and L4-L5. In spite of the improvement in his low back symptoms following surgery, Petitioner credibly testified he still has symptoms which impact both his work and recreational activities. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

AUGUST 12, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001457
Case Name	Andrew Skalski v. Village of Lake Zurich
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0026
Number of Pages of Decision	11
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Patrick Jesse

DATE FILED: 1/28/2026

/s/Frank Soto, Commissioner

Signature

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.

January 28, 2026

O:1/21/26

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	24WC001457
Case Name	Andrew Skalski v. Village of Lake Zurich
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Patrick Jesse

DATE FILED: 5/14/2025

/s/Nina Mariano, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 13 2025 4.11%

STATE OF ILLINOIS)
)SS.
 COUNTY OF LAKE)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

ANDREW SKALSKI

Case # 24WC001457

Employee/Petitioner

v.

Consolidated cases:

VILLAGE OF LAKE ZURICH

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Nina Mariano**, Arbitrator of the Commission, in the city of **Waukegan**, on **4/15/2025**. 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 11/27/2023, 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 \$106,860.00; the average weekly wage was \$2,055.00.

On the date of accident, Petitioner was 39 years of age, married, with 2 children under 18.

Petitioner has received all reasonable and necessary medical services.

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

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

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

ORDER

The Arbitrator finds that petitioner's condition of ill-being with respect to his foot contusion is related to the accident.

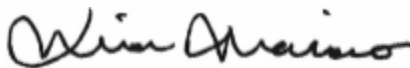
Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, and \$0.00 for maintenance benefits, and \$0.00 for a total credit of \$0.00.

The parties stipulated that all related medical expenses have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of \$1,024.87/week for 5.01 weeks, because the injuries sustained caused 3% loss use of the left foot, as provided in Section 8(e) of the Act.

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

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



MAY 14 2025

Signature of arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

ILLINOIS WORKERS’ COMPENSATION COMMISSION

<u>ANDREW SKALSKI,</u>	)	
	)	
PETITIONER,	)	
	)	
v.	)	
	)	CASE No. <u>24 WC 001457</u>
<u>VILLAGE OF LAKE ZURICH,</u>	)	
	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

Procedural History

Petitioner filed an Application for Adjustment of Claim on January 18, 2024 with the Illinois Workers’ Compensation Commission. The Commission assigned this matter case number 24 WC 1457. Petitioner claimed an accident date of November 27, 2023.

On April 15, 2025, the parties proceeded to trial on all issues. According to the trial stipulation sheet marked as Arbitrator’s Exhibit 1, the only issues in dispute were causation within nature and extent and the nature and extent of petitioner’s injuries. The parties made a number of stipulations on the record regarding medical bills and TTD payments. The arbitrator’s decision is limited to the issues of causation within nature and extent and the nature and extent of petitioner’s injuries.

Testimony of Petitioner

Petitioner testified that he works for the Village of Lake Zurich as a firefighter paramedic. Petitioner testified that he began working for the Village of Lake Zurich on September 12, 2011. Petitioner testified that he has worked in the capacity as a firefighter paramedic since his date of hire.

Petitioner testified that on November 27, 2023 he attended an equipment training session. Petitioner testified that a Paratech rescue strut approximately two feet long and weighing 40 to 50 pounds accidentally rolled off a table striking petitioner in the left foot. Petitioner testified that he wore steel toed shoes on the date of accident but the area that his foot became struck did not have

any protection. Petitioner testified that he felt immediate pain rated at a 6/10. Petitioner testified that his lieutenant and captain witnessed the accident. Petitioner testified that accident reports were completed by both himself and his supervising lieutenant.

Petitioner testified that he sought medical treatment at Advocate Good Shepherd Hospital on the accident date. Petitioner testified that he underwent x-rays. Petitioner testified that he was discharged that same date from the hospital. Petitioner testified that he experienced 6/10 pain at the time of discharge. Petitioner testified that he also experienced bruising and swelling in his left foot and could not walk properly. Petitioner testified that he remained restricted from work and received recommendations to take over the counter medication.

Petitioner sought follow up treatment with Dr. Bryant Ho, an orthopedic surgeon with Illinois Bone & Joint Institute. Petitioner testified that Dr. Ho ordered weightbearing x-rays. Petitioner testified that he experienced 4/10 pain at the time he met with Dr. Ho. Petitioner testified that he continued to experience bruising in his left foot and remained restricted from work. Petitioner testified that Dr. Ho prescribed a walking boot as well as formal outpatient physical therapy in addition to Meloxicam and Voltaren gel.

Petitioner testified that the walking boot affected his left knee and hip and therefore Dr. Bryant Ho recommended discontinuation. Petitioner testified that he underwent physical therapy exercises at Illinois Bone & Joint Institute. Petitioner testified that he completed a total of six physical therapy sessions. Petitioner testified that he performed stretches as well as riding a stationary bike and balance ball exercises in addition to calf raises while attending PT. Petitioner testified that the PT sessions lasted approximately one hour. Petitioner testified that he also learned home exercises from his therapist which were similar to the exercises performed during formal physical therapy.

Petitioner testified that his treatment ended on January 10, 2024 at which time Dr. Ho released petitioner from treatment. Petitioner testified that he resumed full duty work as a firefighter paramedic on January 10, 2024. Petitioner testified that he experienced 1/10 pain when he resumed his full duties as a firefighter paramedic. Petitioner testified that the bruising in his left foot had not completely resolved at the time he resumed full duty. Petitioner testified that he experienced minor pain after sitting for a while in the first two shifts following his return to work. Petitioner also testified he continued home exercises for several weeks thereafter.

Presently, petitioner testified that if his left foot remains flexed for a duration of time, he will experience some pain. Petitioner also testified that he experiences pain with squatting or kneeling at work.

On cross-examination, petitioner testified that he returned to full duty work on January 10, 2024. Petitioner testified that he has not missed any time from work as a result of his left foot since he resumed full duty employment. Petitioner testified that the diagnostics including the x-rays of the left foot were negative for any fractures and petitioner did not undergo any MRI studies of the left foot. Petitioner admitted that the treatment consisted of physical therapy and a walking boot for

several weeks. Petitioner admitted that he told Dr. Lee that he had no real pain limitations or issues regarding the foot. However, petitioner clarified that he did report some pain with squatting to Dr. Lee, respondent's independent medical examiner. Petitioner denied taking any medication at all related to the left foot. Petitioner generally admitted that he has no problems performing his full duties as a firefighter but for the minor pain while squatting. Petitioner further admitted that his diagnosis at all times remained a left foot contusion.

Medical Exhibits

According to the emergency room records from Advocate Good Shepherd Hospital (Petitioner's Exhibit 3), petitioner reported an injury to his left foot due to dropping weights on the foot during a training exercise. The x-ray report indicates that there were no fractures identified on the images. The discharge diagnosis consisted of a foot sprain/contusion. The records revealed that petitioner remained limited to sedentary/desk duty for three days following discharge.

Petitioner then sought treatment with Dr. Bryant Ho on December 5, 2023 (Petitioner's Exhibit 4). According to the records, petitioner reported an injury when a 50-pound piece of equipment fell off a table. Petitioner reported ongoing pain and discomfort in the left foot area. Petitioner reported increased pain in his foot with walking. Dr. Ho obtained weight bearing x-rays which appeared to be normal without any signs of fractures. Dr. Ho diagnosed petitioner with a left foot contusion. Dr. Ho ordered immobilization of the foot. Dr. Ho kept petitioner off work and referred petitioner for physical therapy.

On December 19, 2023, petitioner returned to Dr. Ho. Petitioner reported improvement since the prior office visit. Petitioner complained of achiness and soreness in the left mid foot area. Petitioner denied taking pain medications. Petitioner stopped wearing his CAM boot as this caused issues regarding his knee and hip. The exam findings by Dr. Ho revealed no tenderness over the talonavicular and navicular cuneiform joints. There were no findings of mid foot tenderness. There were findings, however, of tenderness over the posterior tibial tendon. Dr. Ho recommended that petitioner continue physical therapy and remain off work.

Petitioner began physical therapy at Illinois Bone & Joint Institute on December 21, 2023 (Petitioner's Exhibit 5). The therapist recommended petitioner continue physical therapy for three weeks. According to PT evaluation notes of January 5, 2024, petitioner denied any pain throughout the day. Petitioner reported that his pain could increase to an 8/10 when going from a kneeling to a standing position. Petitioner completed five visits of physical therapy at that time. The therapist noted that petitioner showed significant progress with ankle strength and pain. Petitioner also demonstrated the ability to lift up to 45 pounds.

Petitioner completed one additional session of physical therapy for a total of six sessions.

Petitioner returned to Dr. Ho on January 10, 2024 (Petitioner's Exhibit 4). At that time, petitioner reported that his foot pain had improved. Petitioner denied any pain or issues. Petitioner denied

taking pain medication. The physical exam remained unchanged since the prior visit. Dr. Ho diagnosed petitioner with a left foot sprain contusion. Dr. Ho released petitioner to return to work full duty. Dr. Ho released petitioner to maximum medical improvement.

Section 12 Report of Dr. Simon Lee and Testimony of Dr. Lee

At respondent's request, petitioner underwent an independent medical exam with Dr. Simon Lee on September 4, 2024. According to Dr. Lee's report (Respondent's Exhibit 1), Dr. Lee diagnosed petitioner with a left foot contusion. Dr. Lee causally related the original incident to the diagnosis. Dr. Lee agreed that petitioner's medical treatment remained reasonable, necessary and causally related to the injury. Dr. Lee concluded that petitioner reached maximum medical improvement. Dr. Lee performed an impairment rating. Dr. Lee determined that petitioner had a 0% permanent partial impairment rating.

Dr. Lee also testified on January 7, 2025 (Respondent's Exhibit 1). In Summary, Dr. Lee testified consistent with his IME report. Dr. Lee testified that he believed petitioner's diagnosis of a foot contusion remained related to the work accident. Dr. Lee testified that based upon the *American Medical Association Guides to the Evaluation of Permanent Impairment*, petitioner received a 0% rating indicative of no problems, no objective abnormalities or findings on the exam or radiographic studies. On cross exam, Dr. Lee admitted that the AMA rating is only one of several determinants of disability. Dr. Lee admitted that disability and impairment are not one in the same.

Dr. Lee conceded that per the AMA guidelines he is supposed to review an individual's medical records before examining them and calculating an impairment rating. (Res. Ex. 1 pgs. 42-43) He did not review Petitioner's medical records in this instance because Respondent did not provide him with any records. (Res. Ex. 1 pgs. 42-43) Dr. Lee was also not provided with a job description for Petitioner. (Res. Ex. 1 pgs. 59-60)

CONCLUSIONS OF LAW

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

While causal connection is marked as an area of dispute on the trial stipulation sheet, this is only within nature and extent per agreement of the parties. The arbitrator finds that the evidence including the medical records of Dr. Ho as well as the testimony and IME report of Dr. Lee established that petitioner sustained a left foot contusion that related to the work accident. There was no testimony regarding any other injuries or body parts affected as a result of the accident. Therefore, the arbitrator concludes that the left foot contusion petitioner sustained on November 27, 2023 and current complaints relate to the accident.

Nature and Extent

In determining PPD benefits, Section 8.1(b) of the Act directs the Commission or arbitrator to consider the following (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 factors will be the sole determinant of disability.

Under Section 8.1b(b)(i), the arbitrator acknowledges that a permanent partial disability impairment rating report and/or opinion was submitted into evidence in this case. Specifically, Dr. Lee offered an impairment rating report which found 0% impairment. The arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the arbitrator notes that petitioner works as a firefighter paramedic, which requires him to be active and work on his feet. Petitioner testified that he is able to perform his full job duties. The arbitrator gives moderate weight to this factor.

Under section 8.1b(b)(iii), the age of the employee at the time of the injury, the arbitrator notes that petitioner was approximately 39 years old at the time of the accident. Because of his relative youth and decades of future work life ahead of him, arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future capacity, the Arbitrator notes Petitioner has suffered no loss of future earning capacity and gives no weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treatment records, the arbitrator finds that petitioner sustained a minor foot contusion that resolved within several weeks from the accident. Petitioner underwent six sessions of PT and a home exercise program. The x-rays were negative for any type of fracture or serious injury. Despite these treatment modalities, he still reported pain in the top of his left foot when he squats for long periods of time. The arbitrator finds that petitioner reached maximum improvement on January 10, 2024. The arbitrator gives greater weight to this factor.

Based on the above factors and the record taken as whole, the arbitrator finds that petitioner sustained permanent partial disability in the amount of 3% loss use of the left foot under Section 8(e) of the Act. Respondent shall pay Petitioner permanent partial disability benefits of \$1,024.87/week for 5.01 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023360
Case Name	Rhys Hund v. Brian Linck
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0027
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Kenton Owens, Deanna Litzenburg, James Keefe Jr

DATE FILED: 1/29/2026

/s/ Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rhys Hund,

Petitioner,

vs.

NO: 23 WC 023360

Brian Linck, Inc. and Illinois State Treasurer, as ex officio
 Custodian of the Injured Workers Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondents herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, employment, medical expenses, permanent disability, temporary disability, (other) was respondent operating under act, 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 Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 1, 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. Pursuant to §19(f)(2)(1), Respondent IWBIF is exempt from the bonding requirement.

January 28, 2026

o11526

MEP/ypv

049

/s/ Maria E. Portela

/s/ Christopher A. Harris

/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC023360
Case Name	Rhys Hund v. Brian Linck
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe Jr, Deanna Litzenburg, Kenton Owens

DATE FILED: 5/1/2025

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 29, 2025 4.07%

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



May 1, 2025

/s/ Michele Kowalski
Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Williamson)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Rhys Hund

Employee/Petitioner

Case # **23** WC **23360**

v.

Consolidated cases:

**Brian Linck, Inc. and Illinois State Treasurer, as ex officio
Custodian of the Injured Workers Benefit Fund.**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon** Arbitrator of the Commission, in the city of **Herrin**, on **March 5, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **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* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$11,103.00**; the average weekly wage was **\$625.00**.

On the date of accident, Petitioner was **26** years of age, *single* with **0** dependent children.

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

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

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

Respondent is entitled to a credit *for all medical bills paid* under section 8(j) of the Act.

Respondent was uninsured on the date of accident.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 12, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all 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 total disability benefits of **\$589.51/week** beginning 11/9/20 for life, pursuant to Section 8(e)18 and 8(f) of the Act.

Respondent shall pay Petitioner the sum of **\$375.00/week** for a period of **180.6** weeks, as provided in Section 8(d)2 and 8(e) of the Act, because the injuries sustained caused **10%** loss of use of the person as a whole as to the vertebral fractures, **20%** loss of use of the right arm, **5%** loss of the person as a whole as to the jaw, **1%** loss of use of the person as a whole as to the broken rib and **10%** loss of use of the person as a whole as to the buttocks wound.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act.

Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MAY 1, 2025

ICArbDec p.2

PROCEDURAL HISTORY

This matter proceeded to trial on March 5, 2025, on all issues. The issues in dispute are: 1) whether the Petitioner and Respondent Linck were operating under the Illinois Workers' Compensation Act on November 9, 2020, and their relationship was one of employee and employer; 2) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 3) timely notice of the accident; 4) the causal connection between the accident and the Petitioner's current condition; 5) the Petitioner's average weekly wage; 6) liability for medical bills; 7) entitlement to TTD benefits; 8) the nature and extent of the Petitioner's injury, including entitlement to permanent total disability benefits; and 9) Respondent Linck's non-insured status.

FINDINGS OF FACT

The Petitioner testified that he understood that he was employed by Respondent Linck, who was engaged in the logging business. (T. 12) He said he worked for Respondent Linck since about February 2020. (T. 12-13) He said he got direction from Respondent Linck in terms of what work he was going to be doing. (T. 13) He said he trimmed whatever tree Respondent Linck cut, and Respondent Linck was always teaching him how to do it and what to do safely. (Id.) The Petitioner testified that he had no training or experience in trimming trees and got his training through Respondent Linck. (Id.) He said Respondent Linck decided what trees were going to be cut down and did not have any communication with the landowner in securing the contract to remove the trees. (T. 14)

The Petitioner said that when he started working, Respondent Linck provided all of the necessary equipment, including chain saws, helmet, chaps, oil, gas, bars and chains for the chain saw, skid steer and bulldozer. (T. 14-15) He said that at some point, he was given the opportunity

to buy his own saw, which he bought through Respondent Linck. (T. 15) He said he was under the assumption that he couldn't "just go get that chain saw." (T. 15-16) He said it was a brand Respondent Linck preferred and liked in a certain style. (Id.) He said Respondent Linck continued to supply all of the other equipment. (T. 16) The Petitioner said Respondent Linck told him where to show up for work and what hours and days to work. (T. 16-18) It was his understanding that he was expected to be available to work whenever Respondent Linck wanted him on the job. (T. 43) The Petitioner stated that he didn't have a uniform and had his own transportation to and from work every day. (T. 35-36) He said no one informed him that he had to carry workers' compensation insurance nor that he was considered an independent contractor. (T. 40)

The Petitioner identified a 1099 form from Respondent Linck to the Petitioner showing nonemployee compensation of \$11,103.00 for 2020 that was handwritten and had no entries for taxes withheld. (PX14) He also submitted a photo of a handwritten check from Respondent Linck to the Petitioner dated June 10, 2020, in the amount of \$625.00 for one week of work consisting of five days. (PX15, T. 19) On the check's memo line was written "Payroll." (PX15) The Petitioner testified that all of his paychecks were from Respondent Linck but not all reflected "payroll." (T. 43) He said he was not able to take lunch when he wanted to, and he took breaks when he had an opportunity when waiting for Respondent Linck to cut a tree. (T. 34)

On November 9, 2020, the Petitioner was to trim a tree cut by Respondent Linck using a machine. (T. 20) He said he rode on the back of the machine driven by Respondent Linck towards the trees. (T. 21) When Respondent Linck pulled up to the first tree, the Petitioner hit the top of the machine to let Respondent Linck that he was getting off of the machine. (Id.) He threw his saw down, got off the machine, went to grab his saw and looked over his shoulder. (T. 22) He

said that was the last thing he remembered before waking up in a hospital. (Id.) He said he later learned that a tree fell on him. (T. 23)

The Petitioner was air evacuated to St. Louis University Hospital. (T. 23, PX1) Records reflect he presented following a traumatic head and spine accident in which he was struck in the head by a falling tree branch while at work. (T. 23, PX1) The Petitioner summed up his injuries as: multiple fractures of his thoracic spine at T11 and T12 that caused paraplegia; an L1 transverse process fracture; fractured jaw; fractured radius of the right arm; and a fractured rib. (T. 24-25, 31) The Petitioner underwent surgical open reduction and internal fixation of his jaw and a closed reduction and splinting of his right arm. (PX4, PX5) He underwent open treatment of a T11-12 fracture dislocation, including placement of instrumentation and a spinal fusion at T9-L2. (PX3) He later had another surgery to his right arm to fix an ossification. (T. 25) The Petitioner said he developed pressure sores that became infected. (T. 25-26)

On November 18, 2020, he was discharged from St. Louis University Hospital with nine different medications and was sent to spinal cord rehab. (PX1, PX6) He was instructed to follow up with an orthopedic surgeon and an otolaryngologist. (PX1) He was discharged from Mercy Rehabilitation Hospital of St. Louis on November 28, 2020, after participating in a comprehensive, inpatient rehabilitative program consisting of physical therapy, occupational therapy and 24-hour rehabilitation nursing. (PX6) From a functional standpoint at the time of discharge, the Petitioner was “standby assist” for feeding and grooming, “min assist” for upper body dressing and “mod to max assist” for bed mobility. (Id.) He was discharged with 11 medications. (Id.) On February 9, 2021, the Petitioner was referred to physical and occupational therapy. (Id.)

The Petitioner, who is wheelchair-bound, testified that he has lost the use of both of his legs, and his paralysis begins just under his belly button. (T. 26) He said he still has issues with his right arm and can't fully move his wrist to put his palm up or down. (T. 26-27) He said this causes issues with grooming, cooking or cleaning. (T. 27-28) For the wound in his buttocks, he has to do "pressure reliefs" every day. (T. 28) He said his lower back was "always hurting," but some days are worse than others when he has "to be just curled over in a ball just trying to stretch it or make it so it is not hurting" so he can go about his day. (T. 29-30) He said that everything he loved to do – such as hiking and camping – he can't do anymore. (T. 30) He said that he had a lot of pain trying to chew, but that seemed to get better. (T. 31-32) He said he still can't chew hard foods on the right side. (T. 32) He currently is trying to figure out modifications to his home, which he said is going to be very expensive. (T. 30-31) In a letter dated August 31, 2023, Dr. Spencer Cotterell, a physical medicine and rehabilitation provider with Mercy Rehabilitation Hospital, stated that due to the Petitioner's spinal cord injury and utilization of a wheelchair for his primary mobility, it is vital his home environment be ADA accessible/compliant. (PX11)

The Petitioner has been receiving Social Security disability benefits since May 2021 of \$1,053.00 per month.

Topaz Bertino, an employee with NCCI Holdings, Inc., the parent corporation of the National Council on Compensation Insurance, Inc., prepared a certification stating that, based on research conducted by NCCI, there was no proof that Respondent Linck had workers' compensation insurance on November 9, 2020. (PX13)

CONCLUSIONS OF LAW

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

ISSUE (A): Was Respondent operating under and subject to the Illinois Workers' Compensation Act?

ISSUE (O): Insurance Coverage.

Respondent Linck was operating a logging business in the State of Illinois. The Petitioner presented a certification from NCCI Holdings stating that there was no evidence that Respondent Linck had workers' compensation insurance on November 9, 2020.

Therefore, the Arbitrator finds Respondent Linck to be operating under and subject to the Act and that he had no workers' compensation insurance on November 9, 2020.

ISSUE (B): Was there an employee-employer relationship?

The Illinois Supreme Court has given various factors to help determine when a person is an employee: whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; and whether the employer supplies the person with materials and equipment. *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 175, 866 N.E.2d 191, 200 (2007). No single factor is determinative, and the significance of these factors will change depending on the work involved. *Id.* The determination rests on the totality of the circumstances. *Id.* However, the right to control the manner of the work is often called the most important consideration. *Id.*

Additionally, the courts have considered whether the employer's general business encompasses the person's work:

"Because the theory of worker's compensation legislation is that the cost of industrial accidents should be borne by the consumer as part of the cost of the product, this court has held that a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which

allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act." *Id.*

The analysis of the above factors results in a mix of findings both in favor of and against finding an employer-employee relationship. Respondent Linck controlled the manner in which the Petitioner performed the work. He taught the Petitioner, who had no prior logging experience, how to trim trees. He decided what trees to cut. Respondent Linck dictated the Petitioner's work schedule. Respondent Linck paid the Petitioner by the day, rather than hourly. Respondent Linck did not withhold taxes from the Petitioner's pay, but the paycheck entered into evidence stated it was for "payroll." Although there was no evidence as to whether Respondent Linck could discharge the Petitioner at will, the fact that there was no written contract dealing with discharge leads to the conclusion that the Petitioner was an "at will" employee. With the exceptions of clothing and – later on – a chainsaw, Respondent Linck supplied the Petitioner with the materials and equipment to do the job. The Arbitrator notes that the Petitioner purchased the chainsaw from Respondent Linck, who thus controlled the type of chainsaw the Petitioner was to use.

Furthermore, the Arbitrator finds the Petitioner's services formed a regular part of the cost of the lumber produced by Respondent Linck and the Petitioner's work did not constitute a separate business that allowed a distinct channel through which the cost of an accident may flow. This makes the Petitioner's employment presumptively within the area of intended protection of the Act.

Therefore, the Arbitrator finds the Petitioner has proved by a preponderance of the evidence that there was an employee-employer relationship between himself and Respondent Linck.

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

An injury is an accident when it is traceable to a definite time, place and cause and occurs in the course of employment, unexpectedly, and without affirmative act or design of the employee. *Matthiessen and Haegler Zinc Co. v. Industrial Commission*, 284 Ill. 378, 120 N.E.2d 249 (1918).

The Petitioner's un rebutted testimony and the medical records showed that on November 9, 2020, the Petitioner was struck by a tree while picking up his chainsaw to begin trimming the trees Respondent Linck was cutting. Respondent Linck was present at the time of the accident. The Arbitrator finds the Petitioner sustained an accident on November 9, 2020, that arose out of and in the course of his employment by Respondent Linck, and timely notice of the accident was given to the Respondent.

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

Based on the Petitioner's testimony and the medical records, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the injury.

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

Section 10 of the Illinois Workers Compensation Act provides four different 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;" and (4) 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. Indus. Comm'n*, 197 Ill.2d 225, 230-231, 756 N.E.2d 822, Ill.Dec. 548 (2001).

Petitioner provided un rebutted testimony and documentation of his earnings, although the exact start of his employment with Respondent Linck is not known. The Petitioner earned \$625.00 per week. Under these circumstances, the Arbitrator finds the most appropriate method of calculating average weekly wage is the fourth method. Therefore, the Arbitrator finds the Petitioner's average weekly wage was \$625.00.

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

Based on the above findings regarding causal connection and the medical records, the Arbitrator finds that the services provided were reasonable and necessary in the care and treatment of the Petitioner's injuries. The Arbitrator finds that Petitioner is entitled to medical benefits itemized in Petitioner's Exhibit 12. The Arbitrator finds the Respondent has not paid all charges relating to the Petitioner's reasonable and necessary medical care. As a result, the Respondent shall pay these charges per to the medical fee schedule as provided in Section 8(a) and Section 8.2 of the Act. The Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits, and the Respondent shall hold the Petitioner harmless from

claims by any providers of the services for which the Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

Due to the findings below regarding PTD benefits, the Arbitrator does not award TTD benefits.

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

Section 8(e)18 provides for statutory PPD benefits for loss of use of both legs. Due to the Petitioner's paraplegia, he lost the use of both legs as of the date of the accident. Therefore, the Petitioner is entitled to statutory PPD benefits of \$589.51 (statutory minimum rate) per week starting November 9, 2020, for life.

In addition, the Petitioner suffered broken vertebrae, a broken arm, a broken jaw, a broken rib and an abscess on his buttocks that the Arbitrator finds resulted in an increase in disability, making him eligible for PPD benefits. See *American Coal Company v. Illinois Workers' Compensation Commission*, 2024 IL App (5th) 230815WC, 248 N.E.3rd 493, 478 Ill.Dec. 868 (5th Dist.).

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 worked as a logger and is no longer able to do so. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 26 years old at the time of the injury. But for the accident, he would have had many work years left in his lifetime. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner was earning \$625.00 per week. Currently, he receives \$1,053.00 per month in Social Security disability benefits. The Arbitrator places some weight on this factor.

(v) **Disability.** In addition to his paralysis, the Petitioner still has issues with his right arm and can't fully move his wrist to put his palm up or down, causing issues with grooming, cooking or cleaning. For the wound in his buttocks, he has to do "pressure reliefs" every day. He said his lower back was "always hurting," but some days are worse than others when he has "to be just curled over in a ball just trying to stretch it or make it so it is not hurting" so he can go about his day. Although his jaw has improved, he still can't chew hard foods on the right side. 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 10 percent loss of the person as a whole as to his vertebral fractures, 20 percent loss of use of the right arm, 5 percent loss of the person as a whole as to the jaw, 1 percent loss of use of the person as a whole as to his broken rib and 10 percent loss of use of the person as a whole as to his buttocks wound.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001497
Case Name	Kendall Morrow v. United Continental
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0028
Number of Pages of Decision	37
Decision Issued By	Christopher Harris, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Karen Coon

DATE FILED: 1/30/2026

/s/ Christopher Harris, Commissioner

Signature

DISSENT

/s/ Christopher Harris, Commissioner

Signature

21 WC 1497

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KENDALL MORROW,

Petitioner,

vs.

NO: 21 WC 1497

UNITED AIRLINES, 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 exposure under the Workers' Occupational Disease Act, accident, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, 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 February 18, 2025 is hereby affirmed and adopted.

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

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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 \$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.

January 30, 2026

CAH/tdm
O: 12/18/25
052

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

DISSENT

Petitioner failed to prove a workplace exposure to blastomycosis. The question of whether a claimant suffers from a work-related occupational disease presents a factual question. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 21, 960 N.E.2d 587, 355 Ill. Dec. 705. Where the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn. *Carter v. Azaran*, 332 Ill. App. 3d 948, 961, 774 N.E.2d 400, 266 Ill. Dec. 294 (2002); *Wiegman v. Hitch-Inn Post of Libertyville*, 308 Ill. App. 3d 789, 795-96, 721 N.E.2d 614, 242 Ill. Dec. 335 (1999.)

Petitioner relies on *Timothy Knox v. Illinois Department of Corrections*, 2004 Ill. Wrk. Comp. Lexis 83; 4 IIC 83, to support his argument that he was at an increased risk of exposure to the spores since he was covered with dirt due to the working environment at O'Hare.

In *Knox*, Knox worked at a youth facility located on the border of Aurora and Naperville and was surrounded by soybean and corn fields. An inmate escaped from the facility and Knox had to search the surrounding plowed fields, nurseries and forests for the escaped inmate over the course of three days. Dr. Manam, an expert on blastomycosis, testified that *Blastomyces* spores were to be found in moist, mud-type environments and are more common in rural areas. He opined that Knox was likely exposed to the spores while searching for the inmate in this type of environment.

In the present case, both Dr. Fletcher and Dr. Sadek agree that *Blastomyces* spores survive only in soil with a water source present and are therefore commonly found in proximity to bodies

21 WC 1497

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of water or environments containing decaying leaves and wood. Both acknowledged that they did not know Petitioner's proximity to the soil disruption, whether a sufficient water source was present, and further acknowledged that no testing was performed to confirm the presence of the spores at O'Hare. Dr. Sadek further noted that the spores were less common in urban areas like O'Hare and Petitioner's chances of encountering blastomycosis at O'Hare were practically nil. Instead, Petitioner's sole piece of evidence that Blastomyces spores could have been near O'Hare was that said sores were known to be present in the state of Illinois.

Given the absence of substantive evidence establishing the presence of Blastomyces spores at or near O'Hare, Petitioner's entire case rests on nothing more than pure speculation. Therefore, I respectfully dissent from the Majority.

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC001497
Case Name	Kendall Morrow v. United Continental
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	33
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	Karen Coon

DATE FILED: 2/18/2025

/s/ Jacqueline Hickey, Arbitrator
Signature

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

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)

Kendall Morrow

Employee/Petitioner

v.

United Airlines, Inc.

Employer/Respondent

Case # **21** WC **001497**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **August 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 11, 2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$68,640.00**; the average weekly wage was **\$1,320.00**.

On the date of accident, Petitioner was **56** years of age, *married* with **0** dependent children.

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

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

Respondent is entitled to a credit of **\$964,323.50** under Section 8(j) of the Act. (*See Rx4*)

ORDER**MEDICAL BILLS**

Respondent shall pay directly to Petitioner the reasonable and necessary medical services pursuant to the medical fee schedule of \$46,682.51 to Northwest Community Hospital; \$11,017.00 to Patricia Larson M.D. & Associates; \$38,666.00 to Alexian Brother Medical Care Group; \$1,018,009.81 to Alexian Brothers Medical Center; \$156,228.80 to Kindred Chicago Central Hospital; \$226,041.16 to Alexian Rehabilitation Hospital n/k/a Shirley Ryan Ability Lab; \$522.00 to Elk Grove Medical Associates; \$6,648.00 to Dr. Edward Trudeau, M.D.

TEMPORARY TOTAL DISABILITY

Respondent shall pay Petitioner temporary total disability benefits of \$880/week for 237 2/7 weeks commencing February 12, 2020 through August 30, 2024, as provided in Section 8(b) of the Act.

PROSPECTIVE MEDICAL

Respondent shall authorize and pay for the following, reasonable and necessary medical treatment as recommended by Dr. Fletcher: physical therapy, mental health counseling, home health care, and the home health assessment.

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

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



Signature of Arbitrator

February 18, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

Kendall Morrow,

Petitioner,

V.

United Airlines, Inc.,

Respondent.

Case No. **21WC001497**

RIDER TO DECISION

This matter proceeded to hearing on August 30, 2024, in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner’s Petition for Immediate Hearing under Section 19(b) and 8(a) of the Act. Issues in dispute include occupational exposure/accident, causal connection, notice, medical bills, TTD and prospective medical treatment. See Arbitrator’s Exhibit “Ax” 1.

FINDINGS OF FACT

Background

Petitioner Kendall Morrow, currently aged 61 years, worked for United Airlines, Inc. at the time of his February 11, 2020 occupational exposure. (Tr. p 11) Petitioner was employed by United Airlines, Inc. as a ramp service man and had worked for the company for 33 years. (Tr. p 11). Petitioner's position as a ramp servicemen required him to dispatch and receive airplanes. This would require him to load and unload planes at the gate. Petitioner would be assigned different assignments each shift. He testified that he primarily worked at the B & C terminal. He would sometimes work at the E & F terminal but B & C side were the main locations. (Tr. p 12).

Job Duties

The vast majority of Mr. Morrow's job duties required him to work outside. (Tr. p 13) Petitioner described the conditions of the runway and the power of the jet engines. Petitioner would operate an open-air tractor to go from gate to gate, to go to the freight hangars along the access road, or push planes out toward the runway. (Tr. pp 13-14). Two large components of Petitioner's job duties were dispatching and receiving planes. Petitioner described the process and tasks involved with both dispatching and receiving planes. (Id.)

Petitioner testified that when receiving planes the jet engines would be running and he would have to wave the planes into the terminal with a wand. He testified that the engines would kick up all kinds of dust into the air. (Tr. pp 14-15). He explained how he would stand on the tarmac right in front of the gate and would bring the plane to stop at the gate and block the plane.

He explained the engines during this process were powerful and would kick up dust. (Tr. p 15). Petitioner testified that both turbine engines would be running when the plane was being brought up to the line. (Tr. p 16). He testified that the air was blowing everywhere, whether it was rain, snow, or whatever. He testified that the planes would kick up the wind and that stuff was all over him. (Tr. pp 16-17). Petitioner testified that the turbine engines from the plane would agitate the soot and dirt and just cake his face, hands and body. He testified this dirt and soot would be all over him. (Tr. p 18).

Petitioner also described his job duties associated with dispatching planes. He testified that he would unchock the planes, hook up the push tractor, put on his headset to call the pilot to let him know the plane was ready for position, await the signal from the pilot then push the plane out on the tarmac. He would push the plane out about 100 feet, sometimes further depending on the size of the plane or which side of the terminal he was working. (Tr. p 19). While pushing the plane out on the open air tractor the pilot would start the engine left-sided engine and the dust and fumes would start blowing all over again. (Tr pp 19-20).

Occupational Exposure to Blastomycosis

Petitioner also testified to the excavation work being performed as part of the O'Hare expansion project. He testified to the excavation work being done on the runways along the side of the terminal. He testified dirt was piled up in this area and the turbine engines would blow the dirt. (Tr. p 20). Petitioner testified that operating the open-air tractor was horrible for the pusher of the plane because of the exposure to the elements. He testified since they were doing work on the runways there was dirt and soot that would cake your body. (Tr. p 21).

Petitioner testified that the expansion project began sometime in 2019 when he was still working at United. He testified that as part of the project they were digging up areas along the runway and there were dirt piles everywhere. (Tr. p 23). Petitioner witnessed the excavation work being performed while he was working on the planes. (Tr. p 24). Petitioner testified that the dirt and soot got worse during the expansion project. He testified that this excavation work made his work more difficult because he would breathe it in the air. (Tr. p 25). He reported this to his supervisors and told them something was wrong. (Tr. p 27). Petitioner further testified that when he would go inside after having worked on a plane he would wash his hands and face with paper towels and he could see the dirt caked on him and running down the drain. (Tr. p 25).

Petitioner described the conditions working outside he said the conditions depended on weather of course but that they could be very taxing and working on the tarmac or on the planes. Petitioner also described his work at O'Hare airport in the O'Hare expansion project. Petitioner was working as a ramp serviceman at the O'Hare airport from the expansion project began in 2019. Mr. Morrow testified he noticed the excavation and digging that was being performed along areas of the runway and that there were piles of dirt everywhere. He testified that he could see the dirt and breathe it. Mr. Morrow testified that the areas of the runway being excavated were along the C side. He testified that he actually watched the excavation work being performed while he was working on the planes. Mr. Morrow testified that when the excavation work was being done it was hard to work because he would actually breathe in the dirt. He testified that if he went inside after working on a plane he would have to wash his hands and face with a paper towel and the dirt was just caked on him running down the drain so you could see it.

Petitioner testified that the dirt and soot got worse during the O'Hare expansion project in 2019. Petitioner testified that in the fall of 2019, after the expansion project started, he began to feel a little off. (Tr. p 25). It was becoming harder for him to breathe and he was getting chills and feeling nauseated. (Tr. p 26). He continued to report these symptoms to his supervisors. (Tr. p 26). Petitioner would tell his supervisors the sediment in the air from the excavating was making it difficult for him to breathe. (Tr. p 27). In the end of 2019 Petitioner took some time off work, as he does every year, so he could spend time with his family at home. He did not travel anywhere during this vacation period. (Tr. pp 35-36). He testified however in November 2019 that him and his wife visited his mother-in-law in Wisconsin. (Tr. pp 29-31, 92-93) He testified he did not spend time outside during this day trip of a few hours as his mother-in-law is sick with cancer and a double amputee living in assisted living (Id.) Petitioner continued to experience the same symptoms during this time off. Petitioner returned to work and continued to work his position at United Airlines, Inc. through February 11, 2020. (Tr. p 36). He again reported to his supervisors that he didn't feel well and the increased dust and debris blowing around was really affecting him. (Tr. p 37). Petitioner was having shortness of breath, dizziness, and chills at that time. (Tr. P 38). Following his last day of work Petitioner began to seek medical treatment on February 13, 2020. At that time he presented to Dr. Rosanova. An ambulance was called and Petitioner was transported to the hospital for immediate evaluation for his severe symptoms. (Tr. p 38). After undergoing a multitude of tests it was eventually determined that Petitioner had contracted blastomycosis, a rare infection caused by a fungus present in dirt, soil, leaves and wood.

Gary Ehrhart- United Airlines employee/Petitioner's coworker

Gary Ehrhart, another ramp serviceman, also testified regarding the job duties associated with the position. Mr. Ehrhart worked with Mr. Morrow and confirmed the large majority of the work is outside receiving and dispatching receiving planes. (Tr. p 97). Mr. Ehrhart confirmed the engine turbines would be running and rustling up debris when receiving and dispatching planes. He would see dirt and dust on the ramp being blown around by the jet engines. (Tr p 98). Mr. Ehrhart confirmed the dirt and dust on the runway increased when the expansion project began in 2019. (Tr. pp 98-99). Mr. Ehrhart attributed the dirt and dust being blown up on the ramp due to "a lot of construction at O'Hare" (Id.) He also confirmed there was excavation work being done around B gates in Terminal 1 at the time he worked with Petitioner. (Tr. p 99) Mr. Ehrhart further confirmed that he would be covered with dirt after his shift, and when he showered after a shift, the water would be brown or black. (Tr. p 100).

Paula Morrow- Petitioner's wife

Petitioner's wife, Paula Morrow, testified at the time of hearing. Paula Morrow confirmed when her husband came home from work he would have grease and soot on his face and clothing. She testified there would be a film of grit in the tub. (Tr. p 107). She would notice a dirt accumulated in the sink after Petitioner would use it when he returned home from work. Mrs. Morrow would have to clean this immediately because it would leave a film. She would find dirt and gravel in the catch basin of the wash machine Kendall's work clothes. (Tr. p 108). Mrs. Morrow testified there would just be that gravel stuff in the bathtub. (Tr. p 109). The Morrrows would have a separate basket of towels for Petitioner to use after work. Paula Morrow testified

this has been going on since she had been married to Petitioner but it had worsened in that year in the past six months before Petitioner got sick. (Tr. p 109).

Regarding unusual health symptoms Petitioner had in December of 2019 into the winter of 2020, Mrs. Morrow testified that “he started out with weakness, not being able to breathe, just headaches. His health started to decline. So we had various trips to the hospital and emergency room. They diagnosed him with pneumonia. He did not get any better. His symptoms worsened. He was deteriorating. He got to the point where he couldn't walk, he couldn't walk the stairs, he couldn't breathe. We had several bouts with going to the emergency room, doctors' offices.” (Tr. pp 103).

Mrs. Morrow testified that she began working from home with the start of the COVID-19 pandemic but had previously been off work before this, from her job with Gallagher Basset due to Petitioner's health issues. (Tr. pp 104-106) She also testified that in April 2020, Dr. Larson had Petitioner on medication for the blastomycosis infection and he had frequent lab visits requiring her to take Petitioner to the lab at the hospital twice per week. (Tr. pp 105-106). Mrs. Morrow testified she would take Petitioner to these lab visits as well as the doctor appointments. (Id.) She testified her son was on lockdown at his college and was driving home from school on 4/24/20, the day Petitioner went to the ER and his son drove him there. (Tr. pp 110) Mrs. Morrow testified that the following weekend, or a week after her husband went to the ER, her and her son went to the ER to get tested and that they did not have any symptoms. (Tr. pp 119-120) They both tested positive. (Id.)

Occupational Exposure to COVID-19 and treatment

Petitioner was seen in the emergency room on April 13, 2020. He was again seen on April 15, 2020 by Dr. Hugh and on April 21, 2020 by Dr. Larson. Dr. Larson documented continued abnormal findings in the lung field, shortness of breath. At that time he was still having shortness of breath. He couldn't breathe. He had a cough and chest pain, which was worse with deep breathing. He was also having weakness where he could hardly walk or get out of bed. (Tr. pp 46-47). During this time period Petitioner was also going for lab work up to two times per week to a Quest Labs located in St. Alexius Hospital. (Tr. p 48).

On April 24, 2020 Petitioner was rushed to the emergency room at Alexian Brothers Medical Center. That day he was at home and began to feel shortness of breath and dizziness. Petitioner lost consciousness in his driveway as he was leaving to take his puppy out for a walk. He collapsed in his driveway. (Tr. p 50). The next thing Petitioner remembered was waking up in the hospital. (Tr. p 50). He was admitted to the hospital for blastomycosis and during the hospitalization was found to be positive for SARS CoV2 and pneumonia. On April 30, 2020, Petitioner was transferred to the ICU. He was intubated from May 7, 2020 through May 17, 2020. He was reintubated on May 21 through May 30, 2020. Petitioner remained hospitalized at Alexian Brothers Medical Center through June 7, 2020.

At that time Petitioner was transferred to Kindred Chicago where he received inpatient care from June 7 through July 2, 2020. He was alert but confused at the time he was admitted to Kindred Hospital. There he participated in physical therapy, occupational therapy, speech therapy and nutritional education.

Dr. David Fletcher- Petitioner's IME & Expert

Petitioner was examined by Dr. David Fletcher of Safeworks, Illinois. Dr. Fletcher authored a March 6, 2023 narrative report and testified by way of evidence deposition. Dr. Fletcher testified to his qualifications contained in his curriculum vitae. Page three of Dr. Fletcher's report further outlines his qualifications and expertise regarding COVID-19 and fungal infections. (Px 29, Dr. Fletcher report p. 3).

Dr. Fletcher is a physician who has specialized in occupation and preventative medicine for over 35 years, with significant experience regarding hazards in the workplace, including fungal infections acquired in the workplace. He has previously been tasked by Chairman Brennan to provide arbitrator and commissioner Judicial Training at the IWCC Chicago office on the new AMA Digital Guides 2021 for rating permanent partial impairment. He has served as the senior physician representative to the Workers' Compensation Research Institute Illinois Advisory Committee since 2021. He is also an FAA Senior Medical Examiner with familiarity with occupational risks in the aviation industry. (Px 30, Dr. Fletcher Dep).

Dr. Fletcher was retained to determine the following: Nature and extent; Causation of Petitioner's present condition; Petitioner's ability to work; The permanency of the condition; The reasonableness and necessity of Petitioner's medical treatment; and Petitioner's future medical needs. Dr. Fletcher examined Petitioner on February 27, 2023. Dr. Fletcher obtained a history from Mr. Morrow detailing his employment history with United and his job duties. He noted Petitioner's job duties included loading and unloading baggage from planes and taxiing planes on the runway. Dr. Fletcher noted that around February 11, 2020 Petitioner began to develop symptoms of acute respiratory infection, which turned out to be blastomycosis. He was diagnosed with *Blastomyces dermatitidis* on March 14, 2020. This is the fungus that causes blastomycosis. He found Petitioner to have multi-system cognitive, neurological, and respiratory permanent impairment.

Dr. Fletcher found Petitioner's present condition was related to his occupational exposure to blastomycosis spores at the O'Hare expansion project, due to stirred up soil complicated by getting COVID while in and out of the hospital for treatment for his blastomycosis infection. Both Dr. Fletcher and Respondent's Section 12 examiner found Petitioner's medical care and treatment to be reasonable and necessary to treat his illness and infections. Dr. Fletcher noted the COVID infection was related to the occupational illness, as Petitioner contracted COVID while in and out of the hospital treating for his blastomycosis.

Dr. Fletcher found petitioner is permanently disabled due to a combination of cognitive, neurological, and respiratory issues. (Px 29, pg 6) The fungal infection did not spread outside his respiratory system (pg. 9). He opined it was likely his cognitive impairment is related to his COVID-19 infection and his neurogenic weakness was exacerbated by his COVID-19 infection. (Px. 29, pg 9). Dr. Fletcher opined that petitioner is unemployable due to respiratory impairment as well as proximal muscle weakness caused directly by blastomycosis. He notes the Covid-19 infection caused further multisystem damage that caused severe functional loss. (Px. 29, pg. 9)

On exam, Dr. Fletcher noted petitioner had primarily complaints in his knees and feet as well as some pain in his chest. He was assessed with sensorimotor neuropathy based on the exam in a stocking glove sensory loss pattern. He had weakness in both upper and lower extremities. Petitioner also had impaired cognition. His speech was not fluid and he had difficulty expressing his words. The doctor clarified that the neuropathy and cognition issues were more likely related to the long COVID rather than the blastomycosis. (Px. 30, pg 25, 38) The respiratory issues would be due to both the blasto and the COVID. (Px 30, pg 38)

It was the doctor's opinion that the petitioner developed blastomycosis as a result of being exposed to fungal spores at work. Dr. Fletcher described blastomycosis as a common occupational illness for outdoor workers doing "logging activities, livestock management, farm activities." (Px 30, pg 28) This was the first time Dr. Fletcher has seen a ramp serviceman with blastomycosis. (Px 30, pg 40) Dr. Fletcher testified it was the expansion work that likely expressed the fungal spores into the air. On cross examination, the doctor was uncertain as to the phase of the O'Hare expansion project and was not aware of specifically what work had been performed at the time that the petitioner developed blastomycosis. (Px 30, pg 45)

Dr. Fletcher testified to his belief that while the petitioner was in the hospital for blastomycosis, he developed COVID-19 which turned into long COVID, for which the petitioner still has ongoing symptoms. (Px 30, pg 24, 25) He was unaware the petitioner's family members had also been diagnosed with COVID-19. Dr. Fletcher reviewed the medical records described in his report. Despite his review of the medical records, Dr. Fletcher was unaware that the petitioner had tested positive for COVID-19 on either April 24th or April 25, 2020 after being admitted to the hospital on April 24, 2020. (Px. 30, pg 47)

Dr. Fletcher was unaware that the medical records indicated the petitioner had been in Wisconsin in either October or November prior to developing the blastomycosis. He agreed that camping and exposure to wet soil near riverbanks are known causes of blastomycosis. (Px 30, pg 44)

Dr. Sadek – Respondent's IME & expert

At the request of the respondent, Dr. Sadek performed an IME on January 29, 2024. (Rx. 2) Dr. Sadek reviewed the medical records and performed an evaluation of the petitioner and diagnosed post-critical care myopathy. (Rx 2, Pg. 9) With respect to his shortness of breath and easy fatiguability, the doctor noted his lung exam showed both lungs were clear without rales or wheezing and with the absence of chest imaging or spirometry, the doctor felt the correlation was weak and may relate to generalized residual deconditioning. (Rx. 2, Pg 9) With regard to the difficulty walking and weakness in the legs, it was reasonable to assume petitioner continued to suffer post-critical care myopathies, however, his examination showed this to be mild, as claimant demonstrated no profound weakness in either leg. (Rx. 2, pg. 9)

With respect to the issue of whether the blastomycosis could be said to be an occupational disease and whether it was contracted as a result of working at O'Hare during the expansion project, the doctor noted that although the National Institute of Health lists midwestern, south central, southern eastern United States as areas where blastomycosis may occur, it would be individuals whose job involved soil disturbance or plant matter like outdoor construction, forestry

work or even lab scientists to be at a higher risk for encountering Blastomyces. (Rx. 2, pg 10) The petitioner worked as a ramp agent in an urban environment. Dr. Sadek notes that while soil disturbance may have been part of an ongoing construction nearby, there was no information as to how close and for how long claimant was near the site or whether soil analysis may have confirmed the presence of spores in the area. Also, the doctor believed claimant took a prolonged vacation of several weeks during which there was alleged travel to Wisconsin, a state listed by the CDC where blastomycosis is endemic. (Rx. 2, pg 10) Hence, Dr. Sadek opines that “it was this author’s opinion from a reasonable degree of medical certainty that the causative connection probability for claimant’s work exposure in contracting blastomycosis is weak and unlikely.” (Rx. 2, pg. 10)

With regard to the COVID-19, the doctor notes that Spring 2020 was peak transmission time during the pandemic and many people contracted COVID-19 and needed hospitalization and critical care. (Rx. 2, pg 10) The doctor noted that the petitioner stated he felt much better during his visit with Dr. Larson on April 21, 2020, then several days later he needed emergency room admission following his syncope episode. He noted this makes the case of weak immune state as to result in his COVID-19 infection also less likely. (Rx. 2, pg 10)

While unrelated to the employment, Dr. Sadek recommended petitioner undergo physical therapy with emphasis on achieving independent mobility followed by work conditioning for the deconditioning related to the COVID-19. (Rx. 2, pg 11) The doctor felt there was no additional medical care needed with respect to his past infection of blastomycosis. (pg. 11) With a COVID-19 infection that requires prolonged hospitalization, intubation and intensive care treatment, residual myelopathy is not necessarily uncommon, however, the majority respond well to physical and occupational therapy post-infection.

The doctor noted that occupational causation to blastomycosis is not confirmed and only a possible theory, however, from the standpoint of the blastomycosis, claimant would be considered at maximum medical improvement as of one year from the diagnosis around mid-March, 2021. (Rx 2, pg. 11) He agrees the petitioner is currently unable to return to work without restrictions. Restrictions would be desk work only followed by a program of work conditioning. The restrictions are related to his mild general deconditioning following his critical care course. Rx. 2, pg 12)

Dr. Sadek testified that he is board certified in environmental and occupational medicine. (Rx. 1, pg 5) testified that the causative connection and probability for a work exposure and the petitioner’s contracting blastomycosis at the place of employment was weak and unlikely. Specifically, Dr. Sadek testified that the chances of encountering blastomycosis in an urban environment like O’Hare was “weak to nil”. The doctor explained that it was unknown whether there were any areas of standing water near the area that was being dug up for the new runways at O’Hare. Standing water or a water source is necessary, as the fungus needs water to survive prior to implanting in a host.

On examination, Dr. Sadek found the petitioner had a normal breathing pattern and his breathing was not labored. He also had a shuffling gait, however, this was slight. Dr. Sadek did diagnose post critical care myopathy which is seen in older adults who have been hospitalized for

a period which results in weakness in the legs. Dr. Sadek felt the petitioner requires additional physical therapy and occupational therapy in order to be able to return to work. At present, the petitioner could perform only a sedentary desk position, however, he would hope that with additional therapy the petitioner could return to full duty work. The need for the treatment and restrictions was due to deconditioning from his hospitalization from COVID. For the blastomycosis, the petitioner would have needed to undergo continued antifungal treatment for a year so that the condition did not reappear. As such, the petitioner did not reach maximum medical improvement for the blastomycosis until approximately March, 2021.

Medical Record Summary

Petitioner was seen at Northwest Community Hospital on February 4, 2013 due to complaints of chest pain. The prior medical history showed hypertension and depression. The diagnoses were atypical chest pain noted as likely secondary to costochondritis and hypertension.

On September 10, 2015, petitioner was seen again at Northwest Community Hospital Emergency Department due to shortness of breath; however, he left the facility before being fully evaluated.

Petitioner again presented to the Northwest Community Hospital Emergency Department on January 8, 2017 for shortness of breath. He was diagnosed with dyspnea likely related to obstructive sleep apnea. A referral to the sleep lab was provided.

X-rays of the chest on October 15, 2018 (compared to January 27, 2009) showed no active disease. Lungs were clear of infiltrates.

Petitioner presented to Dr. John Rosanova at Northwest Community Healthcare on February 13, 2020 with complaints of bilateral leg pain from the hips and lower back down the legs, palpitations and fatigue. The review of systems showed heart racing/palpitations on and off for the last month, several weeks of shortness of breath/dyspnea on exertion and unsteadiness of gait. On exam, the lungs were clear. The assessment was essential hypertension, tachycardia, myalgia and hyperlipidemia. The doctor's office called 9-1-1 for an urgent ER evaluation, labs and a chest CT.

That same day, the Petitioner presented to the emergency department via EMS with a report of progressive SOB and palpitations which had been slowly progressing for one week. He also complained of bilateral leg pain that is worse with walking, chills and generalized fatigue.

As of February 13, 2020, petitioner's health issues included tendonitis (8/25/2016), high blood pressure (8/25/2016), nasal inflammation due to allergen (8/25/2018), depressive disorder (8/25/2016), high cholesterol or triglycerides (8/25/2016), testicular hypofunction (8/25/2016), obesity (8/25/2016), low back pain (8/25/2016), sleep apnea (1/9/2017), bilateral posterior neck pain (2/28/2017), and fast heartbeat (2/13/2020).

Petitioner was evaluated by Dr. Hashem Rajabbik. Petitioner advised that he had been

experiencing his current symptoms for around 2 months, however the last 2 days his symptoms worsened significantly. When asked to describe his leg pain, he stated he cannot walk, can barely lift his foot off the ground and shuffle gate, denied cramping or numbness. Tachycardia also had been worsening, associated with worsening SOB and dry cough that started today, but he denied chest pain. Petitioner reported loss of appetite and chills for past 2 days and about 4 lbs. weight loss over past months. The EKG at his PCP showed sinus tachycardia. A CT chest showed a lung mass suspicious for malignancy. Cardiology was consulted. It was noted that he works for United Airlines in aircraft maintenance. Over the past few months, he noticed SOB on exertion, which worsened in the past few days and was associated with palpitations and lower extremity weakness, with difficulty walking his dog and climbing stairs. Petitioner added that recently at work he fell to the ground due to weakness, but had no loss of consciousness.

The chest x-rays in the hospital showed no evidence of active disease. The CT scan of the chest showed an opacity in the left upper lobe which appeared neoplastic in etiology rather than infectious with left hilar and AP window lymphadenopathy. An echocardiogram showed left ventricular ejection fraction, by visual estimation, at 60 to 65%.

Petitioner was assessed with pneumonia due to infectious organism. The tachycardia was likely physiologic response to infection.

Petitioner was evaluated by Dr. Gregory Scott on February 14, 2020, for pulmonology consultation. Medical history listed reflux esophagitis, elevated creatinine and sleep apnea. The doctor noted that petitioner was sleeping on the left side and this infiltrate was on the left. The CT scan favored inflammatory pneumonia or infectious etiology and Dr. Scott diagnosed pneumonia and prescribed Augmentin for 2 weeks. He did not feel a bronchoscopy was necessary at that time. Dr. Scott issued a respiratory opinion letter reflecting that his impression was pneumonia, left upper lobe, this being either a typical bacterial pneumonia or petitioner having reflux esophagitis and he may have aspired and could be a lung abscess.

Petitioner was discharged home from Northwest Community Hospital on February 14, 2020. The principal diagnosis was pneumonia due to infectious organism.

Petitioner returned to Dr. Rosanova on February 20, 2020. The petitioner was better overall but still had ongoing breathing and coughing issues with congestion and heart racing. Examination showed minor coarse breath sounds. The assessment was pneumonia due to infectious organism, mild intermittent reactive airway disease with acute exacerbation and tachycardia. The plan was Hydrocodone, a Medrol Dosepak, and Levalbuteral. Petitioner would remain off work, have a repeat chest CT and return to Dr. Scott on Monday.

On February 24, 2020, petitioner presented to Dr. Gregory Scott at Alexian Brothers Medical Care Group on referral by Dr. Rosanova for concerns of atypical pneumonia, aspiration and actinomyces. Petitioner reported feeling much better but wanted to be off work for another week. The impression was bacterial pneumonia and pulmonary infiltrates.

The March 9, 2020, CT scan of the chest at Northwest Community Healthcare showed

dense left upper lobe airspace consolidation with numerous pulmonary nodules. The doctor noted this progressed from the prior study on February 13, 2020.

Petitioner presented to Dr. Neeraj Desai at Alexian Brothers Medical Care Group on March 10, 2020 on referral by Dr. Scott. It was noted that petitioner works at O'Hare in aircraft maintenance and had not traveled other than to Wisconsin in October/November 2019. The CT scan from March 2020 showed worsening of the dense left upper lobe airspace consolidation with multiple left upper lobe/left lower lobe pulmonary nodules compared to the study from February 2020. The plan was a bronchoscopy.

The bronchoscopy with biopsy was performed on March 13, 2020. The pathology report revealed fragments of benign bronchial mucosa and lung parenchyma, no inflammation or malignancy was identified. Impression was likely reactive mediastinal lymphadenopathy. Bronchial wash cultures were positive for *Blastomyces dermatitis*.

A repeat CT scan of the chest on March 27, 2020 at Northwest Community Healthcare, showed persistent left perihilar and lung consolidation and adenopathy. Overall increased pulmonary nodularity and tree-in-bud configuration bilaterally. The findings likely representing ongoing pneumonia and the configuration suggesting possibility of TB, MAI or other bacterial or opportunistic pneumonia.

Petitioner followed up with Dr. Desai on March 30, 2020 by telephone and the findings of the bronchoscopy of no malignancy and positive fungal cultures were discussed. The plan was a referral to Dr. Larson in infectious diseases, an additional biopsy if no improvement was seen after anti-fungal therapy and a chest CT.

Petitioner presented to Dr. Patricia Larson at Patricia Larson, M.D. & Associates on March 31, 2020 for evaluation after abnormal sputum culture results and blastomyces dermatitis. Petitioner reported history of a lung abnormality after originally reporting fever, chills, night sweats and coughing. Past history of hypertension, high cholesterol, kidney disease, obstructive sleep apnea, pneumonia diagnosed in March 2020 and blastomyces dermatitis diagnosed in March 2020. The left node fine needle aspiration done with the bronchoscopy showed few benign respiratory cells and small lymphocytes. The biopsy showed fragments of benign bronchial mucosa, lung parenchyma and blastomyces dermatitis at the left upper lobe with no malignant cells. The plan was to start Itraconazole three times daily for three days and then twice daily for 6-12 months. Petitioner was and to return in one month.

The petitioner was admitted to Amita Health ER on April 13, 2020 with symptoms of shortness of breath and was evaluated by Dr. Grant VanHazebroeck.

Petitioner was noted to have a history of blastomycosis and HLD, and reported a choking sensation that started about 2 days ago. Chest x-rays were obtained and appeared greatly improved in the left upper lobe infiltrate when compared to previous on March 13, 2020. A blood test was normal and petitioner was noted to be non-compliant with his CPAP device.

The case was discussed with Dr. Hughes who was concerned about exacerbating the uvular

swelling due to noncompliance with CPAP, however upon examination uvula was non-edematous, just elongated. The case was also discussed with Dr. Larson who recommended a dose of Decadron, followed by another dose in 48 hr. as she was concerned about the 5-day course of steroids at that time. Petitioner was discharged with referral to ENT- Dr. Timothy J. Hughes and provided prescription of dexamethasone for inflammation. The final diagnosis was long uvula. Petitioner was discharged home the same day.

Petitioner attended a tele visit with Dr. Rosanova on April 13, 2020. Petitioner had gone to the Alexian Brothers ER for coughing up blood and was noted to have a swollen uvula, but petitioner reported he was feeling better. The assessment was blastomycosis, uvular swelling and essential hypertension. The doctor suspected a viral illness was causing the swelling in the uvula. Petitioner was to continue treatment for blastomycosis. Petitioner also requested a form for a return to work on May 4, 2020.

Dr. Timothy Hughes saw petitioner in consultation on April 15, 2020. The assessment was uvulitis, obstructive sleep apnea, and pulmonary blastomycosis. The petitioner was prescribed Cefdinir 300 milligrams and Dexamethasone 4 milligrams.

Petitioner followed up with Dr. Larson on April 21, 2020 and reported he went to the ER on April 13 for a choking sensation which was found to be due to uvular swelling and was treated with Decadron. Chest x-rays on that date showed significant improvement, with petitioner now reporting much less shortness of breath but ongoing coughing and chills. The diagnosis remained blastomycosis, abnormal finding in lung field, shortness of breath, chest pain on breathing, chills and cough. The plan was to continue the Itraconazole and return for monthly labs.

Petitioner returned to Amita Alexian Brothers ER on April 24, 2020 and was admitted until his discharge on June 7, 2020. The reason for initial hospitalization is listed dizziness and fall 2 days ago with loss of consciousness. Petitioner reported going out to take his dog for a walk and got dizzy when he was bending to attach his leash but denied falling. He then reported while walking out of his house out to the driveway, he was not able to walk straight, and he fell. He attempted to stand back up, but he fell and passed out. Petitioner similarly described on another intake that while he was in the garage and passed out and that the neighbor witnessed the fall, he got up and passed out again for a total of 2 episodes prior to arrival. He said his son drove him to ER. He did not know if he hit his head or if he was unconscious. It was noted the petitioner was sent for bronchoscopy, which was done on March 13, 2020, and approximately 10 days thereafter blastomycosis was isolated from the specimen and he was started on itraconazole on March 31, 2020. The diagnoses in the ER were orthostatic hypotension and vertigo.

X-rays of the chest on April 24, 2020, showed linear densities on the left upper lobe that appear slightly different from previous x-rays (compared to April 13). This could be new infiltrate and/or postinfectious scarring or atelectasis. A CT scan of the chest was obtained and showed bilateral infiltrates compatible with pneumonia, more extensive on the right. A CT of the brain / head on April 24 was normal and showed no evidence of acute intracranial pathology. The initial Echo on April 24 was abnormal and noted sinus tachycardia, left atrial enlargement.

Petitioner was feeling better and was ready to be discharged when he was taken to the

bathroom and became dizzy and fell striking his back on the wall. He was told that he would need to be admitted, which petitioner refused. He was convinced to stay for another fluids refill and would be reassessed after the fluids.

Petitioner was tested for Covid-19 in the ER which eventually came back positive. He developed hypoxia and required intubation and was transferred to ICU. It is noted that his wife and he had similar symptoms.

On April 25, 2020 petitioner was re-evaluated by Dr. Leonid Zester, and petitioner reported syncope improved and was noted hemodynamically stable. Hydralazine was noted a possible reason for orthostatic hypertension.

Petitioner was then evaluated by Dr. Larson at Alexian Brothers Medical Center on April 25, 2020. Dr. Larson documented petitioner reported at the time of his April 21, 2020 follow-up in her office he felt so much better and all his symptoms had resolved, with infiltrates improved and the doctor noting he was doing absolutely awesome. On April 24, 2020, petitioner went to walk his dog and had a syncopal episode. The doctor added some of petitioner's blood pressure medicine for hypertension had been rearranged recently. In the ER, petitioner was noted to have a fever and a chest x-ray showed new infiltrates. Petitioner was admitted, and a Covid serology was performed and was returned positive. Petitioner had been off work because of the blastomycosis symptoms. It was noted that petitioner's son and wife had also been ill with the same symptoms. (Px. 11, Pg 1603). A review of systems showed the cough and chest pain he had with the blastomycosis were gone. The chest x-rays from the hospital showed linear densities on the left upper lobe which could be new infiltrates. The diagnosis was Covid-19, blastomycosis, hypertension, orthostasis, dyslipidemia and sleep apnea. The plan was to continue Rocephin and Doxycycline, to start Plaquenil, to repeat Itraconazole levels, to follow inflammatory markers and to monitor respiratory status, with petitioner not currently requiring any oxygen or having any symptoms of hypoxia.

Petitioner was evaluated by Dr. Zetser at Alexian Brother Medical Center on April 25, 2020. Petitioner presented to the hospital after a fall and collapse with loss of consciousness. Petitioner complained of dizziness. Past history showed blastomycosis, hypertension, hyperlipidemia and benign prostate hypertrophy. The assessment was syncope with collapse, febrile illness concerning for Sars-Cov-2, blastomycosis, hypertension and benign prostate hypertrophy.

Dr. Larson visited petitioner on April 26, 2020, and petitioner complained his legs collapsed under him with ongoing fever for a week, along with cough and shortness of breath. Dr. Larson assessed orthostatic hypertension and vertigo. Dr. Leonid Zester reviewed chart on April 26, 2020 and assessed acute chronic metabolic encephalopathy due to infectious breath underlying comorbidities treatment and underlying condition. Left lung pneumonia with left upper lobe infiltrate secondary to SARS-CoV-2.

A progress note on April 27, 2020 by Dr. Bhranti Langaliya assessed pneumonia related to Covid-19, acute respiratory insufficiency with hypoxia.

X-rays on April 29, 2020 showed new infiltrates in the periphery of the right lung and in bilateral lower lobes, compatible with pulmonary infection. Left upper lobe linear densities appeared fairly stable since the previous x-ray.

On April 30, 2020, a progress note indicated the petitioner was quite anxious as he was worried about his wife and family who were also COVID19+ at home. (Px. 11, Pg 1202) A consultation report with Dr. Fraley on the same date indicated, "He has had sick contacts. This includes his wife and son." (Px 11, Pg 1594) Dr. Dungan noted on May 1 that petitioner's wife and son tested positive on March 26 and were having body aches, fatigue and dry cough. (Px. 11, Pg. 1179)

The May 4 chest x-rays showed changing pattern of bilateral pulmonary infiltration, significantly worsened on the left. CT of the Chest on May 4, compared to February 23, 2021, showed mild areas of linear scarring that are stable within the lungs bilaterally. Chest x-rays on May 7 showed increased size and density in bilateral lung infiltrates.

Petitioner was intubated on May 7 due to hypoxemia after being taken off BiPap and further impending respiratory failure. On May 9, the case was discussed with Dr. Stansfield and petitioner was deemed not a candidate for ECMO support due to recently diagnosed blastomycosis.

On May 10, 2020 Dr. Joseph Zerrudo provided summary of hospital course. Petitioner was recently seen by infectious disease and was diagnosed with blastomycosis and was started on itraconazole on March 31, 2020. It is noted that all his symptoms resolved until he had his syncope episode while he was walking his dog. It was also noted petitioner's son and wife had also been ill and had positive covid tests. (Pg 1010) It is mentioned that he worked at O'Hare, but because of the blastomycosis, he had been off work since the blastomycosis symptoms.

Petitioner was liberated from vent on May 17, 2020 after prolonged weaning trial. Petitioner was able to breath through his mouth and could voluntarily close his mouth. Chest x-ray on May 18 following extubation showed stable bilateral pulmonary infiltration with no pneumothorax. Portable chest exam on May 18 showed worsening lower lobe infiltrates.

Petitioner underwent OT and PT while in the hospital. Petitioner required moderate assistance with sitting, maximum assistance with scoot toward bed edge, but was able to sit with minimal assistance on the edge of the bed. Petitioner was able to move all extremities minimally, upper extremities stronger than lower extremities. Petitioner also attended speech therapy and was observed being able to mouth his name but did not respond to any other questions. His voicing was very weak.

Petitioner was re-intubated on May 21, 2020 due to hypoxia and tachypnea and becoming minimally responsive when he was seen by Dr. Thomas Murphy. Post-intubation chest x-rays on May 21 showed bilateral lung infiltrates were redemonstrated and appeared mildly increased in the left case.

On May 28, 2020 Dr. Langaliya visited petitioner for re-evaluation following trachea and peg tube placement. Petitioner was still on mechanical ventilation. Chest x-rays on June 1 showed changing pattern of lower lung infiltration, improved on the right and considerable worsened on

the left.

On June 3, 2020 petitioner was examined by Dr. Alicja Milik and he was observed resting in his bed, in no acute distress. Petitioner was off all mechanical ventilation and on T-piece trial now. Petitioner was following appropriately all commands and moving all of his 4 extremities. Overall doing well.

The hospital course of treatment summary from Alexian Brothers on June 7, 2020 indicated petitioner developed hypoxia and required intubation and full ventilator support. Petitioner was extubated on May 17, 2020, and remained on BiPAP and was reintubated on May 21, 2020 and transferred back to ICU on May 22, 2020. Petitioner tested positive for Covid on admission and negative on May 16 and May 19. He underwent placement of tracheostomy and PEG on May 27. Petitioner then received dobbhoff feeding tube and received Lasix due to worsening upper and lower extremity edema. On July 3, 2020, his hemoglobin dropped down to 7.0 and petitioner complained of epigastric pain and one unit of PRBC was transfused. On June 5, 2020 urine cultures came back positive for pseudomonas aeruginosa and course of cefepime was initiated. Petitioner was diagnosed with acute kidney injury which improved with intravenous hydration. Petitioner failed multiple trials of extubation and had persistent dysphagia. Itraconazole have been continued for blastomycosis. Petitioner appeared to have continued resting tachycardia that did not look septic. Cardiology service was requested to re-evaluate. Xanax was also continued related to petitioner's history of anxiety. Petitioner successfully went off ventilator on June 2. Also due to suspected gastrointestinal bleeding, EGD was performed on June 6, 2020 and demonstrated no upper GI bleeding, gastrostomy tube internal bumper was intact. EKG showed sinus tachycardia. Discharge diagnosis included 1). Positive covid test on 4/24/2020. 2). Acute hypoxemic respiratory failure/ARDS secondary to Covid. 3). Chronic respiratory failure, not able to wean off from the vent, status post tracheostomy placement on May 27, 2020. 4) Severe protein calories malnutrition, persistent dysphagia. 5). Blastomycosis, left upper lobe, 1st diagnosis March 2020 with continued treatment. 6). Diarrhea, ongoing but improved. 8) Urinary retention. 9). Pseudomonas aeruginosa UTI diagnosed 6/5/2020. 10). Elevated D dimmer, in setting of recent SARS Covid infection. 11). Anxiety. 12). Transaminitis due to recent Covid 19. 13). Hypertension. 14). Chronic Anemia. 15) DM type 2.

Petitioner was discharged from Alexian Brothers Medical Center in stable condition and was transferred to long-term care hospital on June 7, 2020.

Petitioner was transferred to Kindred Chicago and received inpatient serviced from June 7 through July 2. Admission diagnosis was acute hypoxemic respiratory failure secondary to ARDS due to Covid-19 pneumonia status post tracheostomy. On admission, petitioner was observed to be alert but confused and demonstrated lower extremity weakness. Petitioner wearing trach collar. The records contain progress notes of continued vitals checks, lab results and medication adjustments. Petitioner also attended PT, OT, speech therapy and nutritional education.

On June 30, 2020, a progress note indicated he wanted to be transferred to Alexian Brothers Rehab closer to home. The assessment and plan were noted to be acute on chronic respiratory failure secondary to Covid-19 infection with underlying blastomycosis and chronic obstructive

lung disease; hypertension; and encephalopathy secondary to metabolic and toxic factors much improved.

On July 1, 2020, the notes reflect that the petitioner had a G-tube and was tolerating physical therapy. The impression was noted to be resolved COVID-19 pneumonia, resultant encephalopathy, resolved oropharyngeal dysphagia, removed G-tube. Condition stable, prognosis fair. Petitioner was discharged from Kindred Hospital on July 2, 2020.

Petitioner was transferred to acute inpatient rehab at Alexian Brothers Medical Center from July 2, 2020 through July 23, 2020 and attended PT, OT, speech therapy and swallow therapy.

On June 2 petitioner was excited to be able to move his legs again, but was still having some ataxia of the lower extremity. Petitioner was able to ambulate 65 feet with bilateral rails. Petitioner presented with a past history of blastomycosis, hypertension and hyperlipidemia to Alexian Brothers Medical center on April 24, 2020 with shortness of breath, syncope and hypoxia and was found to be Covid positive the following day. Petitioner was intubated on May 7, 2020 and treated with high dose steroids and Actemra, extubated May 17 and then reintubated on May 21, 2020. The hospital course was complicated by encephalopathy, with a head CT showing no acute abnormality. A PEG line and trach were placed on May 26, 2020, with petitioner then weaned off the vent on June 2, 2020. The course was complicated by urinary retention and infection. Decannulation was on June 18, 2020. The G-tube was discontinued by May 26, 2020. Petitioner was then transferred to Kindred Hospital for continued care before being admitted here.

Petitioner was seen for inpatient OT on July 3, 2020 on referral of Dr. Leung. The PT evaluation revealed deficits with active range of motion of lower extremities, balance deficits, impaired coordination, functional mobility, gait dysfunction, muscle atrophy, lower extremities strength deficits, impaired transfers.

On July 11, 2020 Dr. Larson evaluated the petitioner for a follow up of pulmonary blastomycosis/COVID disease. He presented in February with fever chills, sweats and cough, diagnosed by bronchoscopy done March 13, 2020. He was last seen in the office on April 21 with remarkable improvement of his symptoms and doing well until three days later, April 25 when he was walking his dog and had a syncopal episode. He was taken to the ER and tested positive for COVID-19 with positive swabs and new pulmonary infiltrates bilaterally. He was also suffering from anxiety, which was a problem even before COVID.

He continued to take Itraconazole and was stable regarding his blastomycosis. Recommendation was to continue Itraconazole, obtain CAT scan prior to discharged to follow blastomycosis.

On July 12, 2020, Dr. Larson noted petitioner losing weight and still needing assistance with transfers. Petitioner also suffering from anxiety, which was his problem even before the Covid. He continued to take his itraconazole and was stable. The doctor requested a CAT scan before discharge to follow the blastomycosis component.

Urology consultation on July 17, 2020 confirmed urinary detention likely secondary to critical illness myopathy from his complicated covid infection.

The July 19, 2020 CT of the chest showed interval resolution of bilateral lower lobe consolidations, significant interval improvement in scattered ground glass opacities in the mid and upper lungs. Some interstitial thickening and linear subpleural scarring were noted in the medial upper lobes and lower lobes probably representing postinfectious change. Previously noted 6 mm left upper nodule has resolved. Mild degenerative changes in the thoracic spine were noted.

Petitioner was discharged home from Alexian Brothers Medical Center on July 23, 2020 after being admitted on July 2, 2020 due to impaired gait and Covid recovery. The diagnoses were benign prostate hypertrophy, critical illness myopathy, history of Covid-19, hyperlipidemia, hypertension, kidney stones, microscopic hematuria, nocturia, urinary retention and a urinary tract infection.

The petitioner underwent outpatient physical therapy/day rehab at Alexian Brothers Medical Center from approximately July 27, 2020 through December 3, 2020. The initial diagnosis was deconditioning post-Covid 19. The chief complaint was knee buckling and leg weakness. Petitioner was also noted to have a diagnosis of blastomycosis and history of hypertension and hyperlipidemia. Petitioner underwent concurrent occupational therapy from July 27, 2020 through November 30, 2020 to address ADL deficits, balance deficits, cognitive deficits, activity tolerance, functional mobility, gait dysfunction, strength deficits in the upper/lower extremities and trunk, transfers, visual perception deficits, sensory deficits, kitchen mobility deficits and impairment of driving ability. Speech therapy was also undertaken during this time. The records also show petitioner underwent speech language therapy at Alexian Brothers Medical Center from July 27, 2020 through November 30, 2020.

Petitioner was evaluated by Dr. Shana Margolis at Alexian Brothers Day Rehab on July 30, 2020. The impression was deconditioning post-Covid. The plan was to continue day rehab physical, occupational and speech therapy.

Petitioner was evaluated at the Alexian Brothers Medical Center ER on August 12, 2020. Petitioner had a history of blastomycosis with a recent completed course of Covid infection which required extensive hospitalization and rehabilitation, including a trach placement and being in a coma for 30 days. Petitioner presented with 2-3 days of generalized weakness, lack of appetite, nausea, lightheadedness and occasional mild lower abdominal discomfort.

Other ongoing problems were benign prostatic hyperplasia, cognitive communication deficit, critical illness myopathy, hyperlipidemia, hypertension, nocturia and impaired functional mobility, balance gait and endurance. A CT scan of the pelvis showed a non-obstructing bilateral renal calculi with possible cystitis. Chest x-rays showed bi-basilar, patchy, ground glass opacities concerning for infection, with findings noted as mildly improved on the left and stable on the right compared with the prior study. Dr. Larson was notified as to the normal CT scan and an abnormal urinalysis with a urinary tract infection. The diagnosis was nausea, generalized weakness and an acute urinary tract infection. Petitioner was discharged home on the same day he presented.

Petitioner presented to Dr. Larson on August 17, 2020, and informed he was at ER due to UTI and received Cipro. Doctor recommended continuing cipro. Petitioner continued with monthly lab rechecks on October 8, and November 10, 2020. Dr. Larson documented continued

chest pain shortness of breath in the review of systems. Anxiety and edema was also documented.

Dr. Shana Margolis referred petitioner to outpatient therapy for dysphagia on August 27, 2020.

On September 3, 2020, Dr Margolis noted petitioner continued to experience swelling of his feet and toes. It was noted his his metoprolol was changed to amlodipine, then that was stopped and Lasix was started 5 days ago. He reported 1 fall as his balance and gait are still off. His left leg was weaker but improving.

October 8, 2020 office notes from Dr. Larson document continued take Itraconazole and was stable blastomycosis wise but had reported coughing with clear sputum mainly at night. Dr. Larson noted marked deconditioning and critical illness myopathy.

Petitioner continued to complain of chest pain, cough and shortness of breath along with stress and anxiety. He also was having neurological symptoms of numbness and tingling.

Dr. Margolis re-evaluated petitioner on October 22, 2020 at Alexian Brothers Day Therapy. In the therapy, petitioner's legs were stronger, endurance was better, and ADLs were improved. Petitioner had ongoing occasional confusion and short-term memory issues. He was ambulating with a walker or cane and was easily fatigued. The impression was deconditioning post-Covid 19. Petitioner was prescribed bilateral custom AFOs for bilateral foot drop and instructed to continue day therapy, with discharge anticipated on November 19, 2020.

Petitioner returned to Dr. Larson on November 10, 2020. The plan was to continue the Itraconazole, monthly lab tests and to return in one month.

On November 19, 2020 petitioner saw Dr. Shana L Margolis. Petitioner had an MRI scheduled to rule out prostate cancer. Petitioner reported no pain except pins and needles in his toes, which was better. He felt his legs were stronger, endurance and standing tolerance had improved. He ambulated with a walker and was swallowing well.

On November 24, 2020 petitioner presented to Northwest Community Healthcare Immediate Care Center with chief complaint of altered mental status. It was noted that petitioner was sent here from MRI for acute mental status change and somnolence/slow speech. Apparently, petitioner received 2 mg of Xanax pre-diagnostic sedation and after contrast was being infused mental status changes were noted. 911 was called and petitioner was taken to the hospital.

The final physical therapy note from the day rehab at Alexian Brothers Medical Center on December 3, 2020 petitioner demonstrated mild unsteadiness with left lower extremity step over but no evidence of knee buckling. It was noted petitioner would continue to benefit from skilled physical therapy to address deficits in strength, endurance, motor control, coordination and dynamic standing balance in order to progress functional independence.

Petitioner followed up with Dr. Larson on December 8, 2020. He continued to take Itraconazole and was stable specific to the blastomycosis. The plan was to continue the Itraconazole and monthly lab tests.

On December 30, 2020 was discharged from Day Rehab after being admitted on July 27, 2020 with recommendations to complete a home exercise program. Petitioner had met therapy goals and had reached optimal functional level. At the time of discharge petitioner demonstrated improved standing balance, standing tolerance, activity tolerance, lower extremities strength, bilateral hand strength, bilateral fine motor coordination and independence. Petitioner did not meet the short-term goal of sweeping/vacuuming due to decreased balance and did not meet goal for handwriting, core strength, and in-hand manipulation due to plateau in progress. Petitioner was also discharged from speech therapy due to plateauing progress and reports of general burnout. Petitioner did not attend last 2 sessions and stated that he would like to take some time off from therapy.

CT of chest on January 5, 2021 showed stable scattered areas of interstitial thickening and scarring in the lungs, no nodule or infiltrated was noted. The January 5, 2021 CT angiogram of chest showed no evidence of pulmonary embolus or other acute findings in the chest. Nonspecific mediastinal and right hilar lymphadenopathy was noted.

Petitioner continued to follow with Dr. Larson on January 12, 2021 and February 17, 2021 and was noted to be tolerating the Itraconazole and was stable specific to the blastomycosis.

On February 23, 2021 petitioner presented to Dr. Larson with shortness of breath and chest pain, and occasional premature beats. He was advised to go to ER.

Petitioner presented to Amita Alexian Brothers Medical Center ER on February 23, 2021 and was discharged on February 25, 2021. Petitioner stated that for the last 2-3 weeks he has had worsening dyspnea on exertion, cough and fatigue. He stated that dyspnea from Covid/Blasto last spring never fully resolved and had worsened again recently. There was a concern for cardiac dyspnea and petitioner was admitted. CTA of the chest was negative. Dr. Wesam Ostwani related his symptoms to his recent history of blastomycosis followed by Covid infection. A stress test was ordered with pulmonary follow-up. It was felt petitioner might need to consider inhaler.

Petitioner consulted with Dr. Naeaid Shakir on February 24, 2021. Petitioner stated that his shortness of breath had remained the same since last summer. The doctor opined that the etiology of his shortness of breath was likely related to the severe illness he had from Covid. Pulmonary function testing and bronchoscopy were recommended.

Dr. Larson saw petitioner on February 24, 2021 and noted petitioner was doing very well up until recently when he has had a one week history of deteriorating dyspnea on exertion, along with some funny kind of chest discomfort and cough. He also had some premature beats and cardiac abnormalities. There were awaiting stress test results and would like to do pulmonary function testing to evaluate whether he needed bronchodilators. He was to continue itraconazole.

The stress test and echo were normal. On February 25, 2021 Dr. Larson noted petitioner feeling better, he had no chest pain, but overall was not back to pre-covid baseline. The doctor approved discharge with instructions to arrange for pulmonary function testing to determine

whether he need bronchodilators. Similarly, Dr. Wesam reviewed results and discharged petitioner from cardiology standpoint.

Petitioner presented to Dr. Dennis Abella on March 3, 2021 for a hospital follow-up visit. It was noted he had a normal echocardiogram and a negative cardiac stress test. CT angiogram of his chest showed no pulmonary embolism. He presented for a pulmonary function test. It is noted the doctor discussed with petitioner that he believes his shortness of breath is related to his deconditioning and loss of muscle during his prolonged hospitalization. On examination, the doctor noted decreased breath sounds in both bases, but his lungs were otherwise clear.

On March 12, Dr. Larson cleared petitioner to received Covid vaccine. Petitioner returned on March 18 and April 20, 2020 for his monthly recheck.

The April 19, 2021 pulmonary function analysis by Dr. Neeraj Desai showed normal spirometry, normal lung volumes, and severely reduced diffusing capacity. It was noted that petitioner did not have rescue inhaler.

On April 22, 2021 petitioner returned to Dr. Abella but the PFT results were not yet available. He was also experiencing cough at night and requested a cough syrup. The doctor prescribed Robitussin, amlodipine and increased nortriptyline.

On May 4, 2021 a CT of the chest showed mild areas of linear scarring that were stable within the lungs bilaterally. Dr. Larson called petitioner on May 12, 2021 and informed him that his lab and CT scan results were stable.

On May 26, 2021, Dr. Abella discussed the pulmonary function tests which showed he had normal lung volumes but had a reduced diffusing capacity. The doctor discussed follow-up with a pulmonologist to maximize his medication.

Petitioner was seen by Dr. Edward Trudeau on referral from Dr. Fletcher on March 30, 2023. Dr. Trudeau performed a nerve conduction study test in the upper and lower extremities. The nerve conduction study demonstrated generalized axonal sensory- motor neuropathy (polyneuropathy).

CONCLUSIONS OF LAW

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

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 employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all elements of their claim (*O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 235 (1980)), including that there is some causal relationship between their employment and their injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n*, 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 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). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47.

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. While Petitioner was not the strongest historian, the Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent. 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. While there were some mentions of the family having COVID-19, following the testimony of the Morrows, the Arbitrator finds them to be credible and believes the family contracted and tested positive for COVID-19 after Petitioner's hospitalization. The son was not living with the family at the time as was at college and Mrs. Morrow was working from home and did not have symptoms. The Arbitrator notes that Petitioner's testimony regarding the working conditions at O'Hare and timeline of events leading to diagnosis of his Blastomycosis and COVID-19 infections, were also both corroborated by his co-worker, Mr. Erhart (regarding O'Hare conditions) and then his wife, Paula Morrow. Petitioner came across as a hard-working individual. None of the physicians who treated or examined him noted any symptom magnification. He does not appear to be a sophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

The Arbitrator notes that no United Airlines witnesses were called by Respondent. It is noted that this disputed case is complicated, and the case was well tried by both counsel. The Petitioner's case and Respondent's case are supported by the opinions of well-credentialed doctors and

experts. The Arbitrator makes her findings below on the disputed issues after weighing the experts' opinions, along with the remainder of the evidence adduced.

Issue C, whether Petitioner was exposed to an occupational disease that arose out of and in the course of Petitioner's employment by Respondent AND Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The issues of accident and causation are, of course, related in all Illinois Workers' Compensation and Occupational Disease cases, and they are so intertwined in this case that the Arbitrator addresses both issues together.

Petitioner was last exposed to an occupational disease of blastomycosis which arose out of and in the course of his employment by Respondent on or about February 11, 2020. This finding is based upon Petitioner's testimony, the medical records and the opinions of the medical expert, Dr. Fletcher. Further, the Arbitrator finds that while treating for the blastomycosis, requiring petitioner to go into a hospital setting for lab work twice a week, Petitioner was then exposed to COVID-19. The Arbitrator will discuss the causation for both occupational diseases separately. See below.

The Occupational Disease Act broadly defines an "occupational disease" as follows:

In this Act the term "Occupational Disease" means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public. A disease shall be deemed to arise out of the employment if there is apparent to a rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not be foreseen or expected but after its contraction it must appear to have had its origin or aggravation in risk connected with the employment and to have flowed from that source as a rational consequence."

Here, Petitioner had worked as a ramp-service man for United Airlines for 33 years. His job as a ramp-service man required Mr. Morrow to work outside primarily.

Both Dr. David Fletcher and Respondent's Section 12 examiner agree that Petitioner contracted blastomycosis. They further both agree that blastomycosis is present in Illinois.

Dr. Fletcher testified that he attended medical School at Rush Medical College and received his masters in public health from the University of California, Berkeley, School of Public Health. (Px 30, Dr. Fletcher Dep. Ex. 1 p. 2). Dr. Fletcher treats patients with neurological disorders (Px. 30, Dr. Fletcher Dep. p 11). Dr. Fletcher treats patients with occupational exposures to fungal conditions as part of his practice. (Px 30, Fletcher Dep. p 12). He has in the past treated public works employees who developed blastomycosis as a result of digging activities. (Px. 30, Dr. Fletcher Dep. p 40). Dr. Fletcher, a certified FAA examiner, is familiar with the risks

associated with working in the aviation industry. Dr. Fletcher examined Mr. Morrow for approximately 75-80 minutes. (Px. 30, Dr. Fletcher Dep. p 14). He believes Mr. Morrow's exposure to soil particles and other contaminations which he encountered on the runways when unloading and taxiing planes through his work for Respondent, United Airlines, Inc., at O'Hare airport was the cause of his blastomycosis infection due to breathing fungal spores. (Px 29, Dr. Fletcher report p 7). In his report Dr. Fletcher explains how blastomycosis is a well-known occupational infection. He cites authority confirming the risk of blastomycosis during outdoor construction, demolition or renovation. (Px 29, Dr. Fletcher report p 7). Dr. Fletcher explained that Petitioner worked outside as a ramp service man during the expansion project. He noted a lot of the runways were torn up, and there was a lot of soil that was being stirred up in the air.

Dr. Fletcher went on to explain that he believes Petitioner got blastomycoses spore infections from the soil that was part of the O'Hare expansion project. (Px. 30, Dr. Fletcher Dep. p 27). He testified that the disturbance of the soil could harbor the hyphae from blastomycosis and Petitioner would inhale the hyphae, the spores and develop that respiratory blastomycoses, which can systematically spread. (Px 30, Dr. Fletcher Dep. p 28). He testified that blastomycosis is a well-known occupational-related illness. (Px. 30, Dr. Fletcher Dep. p 28) Dr. Fletcher further went on to explain that blastomycosis is a problem that is not commonly diagnosed right away. (Px. 30, Dr. Fletcher Dep. p 29). The Arbitrator notes that is an important to note as Petitioner noticed symptoms in the fall of 2019 and during his vacation/time off, but did not seek treatment until February 2020 when it appears he declined. While both experts retained in this case are credible and credentialled doctors, the Arbitrator found Dr. Fletcher's analysis and opinions to be more persuasive and reasonable than Dr. Sadek, as further explained below.

The evidence shows that Petitioner's contracted blastomycosis resulted from his exposure to the fungal spores during his work for Respondent from November 2019 through his last day of work before his time off/vacation, December 19, 2019. Further, the record reflects that Petitioner was noticing symptoms or feeling off in November 2019 and during his time off of work, which he took every year. He returned to work for Respondent after 2/5/20 and worked until his first medical visit with PCP, Dr. Rosanova, on 2/13/20. Petitioner has not worked since. Thus, his last day of exposure was on 2/13/20, however the Arbitrator finds Petitioner had also been exposed to the ramp working conditions where construction and excavation of dirt occurred, for at least one month if not more (November-December 2019), based on the timeline presented by Petitioner and relied on by the Arbitrator. The Arbitrator finds it reasonable that Petitioner sought out treatment when he did, as he became more symptomatic. This testimony is also corroborated by the credible testimony of Petitioner's wife. The Arbitrator notes that the medical evidence/testimony presented explains that it can take some time to both become symptomatic from a blastomycosis infection and also even diagnose it, and there was delay in both in this case as well.

The Arbitrator found it persuasive that Dr. Fletcher discussed other risk factor sources of exposure with Petitioner and confirmed Petitioner was not a gardener where he would be exposed to any other disturbed environments and confirmed there was no new construction around his home. (Px. 30, Dr. Fletcher dep. p 29). Based on this history, Dr. Fletcher found to a reasonable degree of medical certainty that the blastomycosis fungal infection was work-related based on the history. (Px. 30, Dr. Fletcher Dep. p 29). Dr. Fletcher testified he was not presented with any alternate causal relationship exposure so it was reasonable that this was developed at the

workplace. (Px. 30, Dr. Fletcher Dep. p 30). The Arbitrator agrees with his analysis as the outside ramp work where Petitioner would be covered in dirt and debris, as corroborated by his worker, as the most likely source for his fungal infection and occupational exposure. Dr. Fletcher further investigated whether any of Petitioner's family members developed blastomycosis fungal infection to see if there may have been any indication for exposure outside the workplace. Dr. Fletcher investigated alternative exposures other than Petitioner's work place but did not see any other exposure. (Px. 30, Dr. Fletcher Dep. p 30). He explained that the soil particles would be disturbed by the earth moving equipment during the O'Hare expansion project and would get whipped up caused by the wind with the planes. Dr. Fletcher explained that if the hyphae is present in the soil its going to get aerosolized and the potential is that someone is going to breathe in the hyphae and spores and develop infection. (Dr. Fletcher Dep. p 30).

At the request of Respondent, Petitioner was examined by Dr. Ibrahim Sadek. Dr. Sadek testified that blastomycosis results from exposure to soil spores that become airborne following mechanical disruption whether with construction material, farming material or natural instances such as earthquakes or mudslides. (Dr. Sadek Dep. p 42). Dr. Sadek testified that the soil becomes disrupted through construction equipment and once airborne the wind can then blow the spores. (Dr. Sadek Dep. p 42). Here, Petitioner testified to the construction work being performed in the area where he was working. His testimony is corroborated by his co-worker Gary Ehrhart who also testified to the same. Mr. Earhart testified to the workplace exposures and increased exposure to blowing dirt and dust when working as a ramp man, as well as the same location of construction/dirt piles where they were working. Dr. Sadek testified before this evidence was presented and therefore could not know that Petitioner's description of the working conditions were in fact corroborated by a coworker. There is ample evidence of the windy conditions on the ramp as well. The jet engines blow dirt and debris all around from the testimony of both Petitioner and his coworker. Petitioner also testified to his condition following his shifts at work. He specifically described the amount of dirt caked on him following his work shift. This testimony is again corroborated by Petitioner's coworker, who would experience the same thing after a shift. Mr. Ehrhart confirmed the dirt and dust on the runway increased when the expansion project began in 2019. (Tr. pp 98-99). Mr. Ehrhart attributed the dirt and dust being blown up on the ramp due to "a lot of construction at O'Hare" (Id.) He also confirmed there was excavation work being done around B gates in Terminal 1 at the time he worked with Petitioner. (Tr. p 99) Petitioner's testimony is further corroborated by the testimony of his wife, Paula, Morrow, who observed Petitioner's appearance immediately following his shifts at work.

Respondent's Section 12 examiner, Dr. Sadek, testified he would need more information about the exposure to confirm whether it was the result of Petitioner's work as a ramp-service man at O'Hare. (Dr. Sadek Dep. p 59). He explained you have to assess the exposure and study all elements of potential exposure and ascertain whether the person did any camping, farming, gardening, or other outdoor activities. (Dr. Sadek Dep. p 59). Dr. Sadek conceded Petitioner did not take part in any camping, farming, gardening, or other outdoor activities. (Dr. Sadek dep. p 60). Dr. Fletcher appeared to have more fully assessed the possible sources of exposure compared to Dr. Sadek. Further, the Arbitrator notes that Dr. Sadek also seems to focus on Wisconsin and the trip Petitioner took with his wife as a more likely or possible source of exposure to the fungus. However, the testimony that came in was that this trip was a day trip (hours long), where Petitioner was indoors visiting an ill mother-in-law. The arbitrator therefore does not find it reasonable or

rational to consider this Wisconsin trip as a possible exposure source for Petitioner's fungal infection.

Dr. Sadek concedes that ramp workers for United are required to work outside in the elements. (Tr. p 62). He further concedes that many ramp workers, although not a requirement, wear protective equipment such as masks, due to the jet fuels and dust to which they are exposed. (Dr. Sadek Dep. p 62). Dr. Sadek testified that the dust gets blown by the jet engines and by the wind. He admitted that people feel irritation to their throat and breathing when working in dusty areas. (Dr. Sadek Dep. p 63). He concedes that breathing in the dust being blown all over can cause problems due to all kinds of things in the dust and dirt. (Dr. Sadek Dep. p 64). More importantly, Dr. Sadek testified that he would expect there to have been some soil disturbance as part of the O'Hare expansion project. He further testified that individuals whose jobs involve soil disturbances or plant matter are at high risk for encountering blastomycosis. (Dr. Sadek Dep. p 65). Therefore, Petitioner was in a work environment where soil disturbance was occurring with the construction and excavation of dirt. Per Dr. Sadek's own medical opinion, Petitioner would be at high risk for encountering blastomycosis. However, the doctor does not conclude this and therefore Arbitrator does not find that to be reasonable based on the facts and testimony presented.

The evidence here demonstrates that Petitioner would be covered in dirt and grime after his shifts and is greater exposed to air-borne dirt at his workplace than he would have been in other environments, therefore increasing the risk of injury and exposure. Here that is increased risk of exposure to fungus/blastomycosis in the dirt being excavated near the runways/ramps Petitioner worked on for Respondent. Petitioner suffered an occupational exposure as a result of a risk that was increased by his employment. The increased exposure to dirt and dust was testified to by Petitioner and his coworker Gary Ehrhart. Petitioner's wife further corroborated Petitioner's un rebutted testimony regarding the amount of dirt and dust he would be covered in following his shift at work.

The Arbitrator notes that according to the CDC, per testimony of the doctors in this case, blastomycosis is a lung infection caused by a fungus that lives in soil which is present in the Midwest. When considering all the facts and circumstances here, the Arbitrator finds it rational and reasonable to conclude that there was increased soil disruption during the O'Hare expansion project, and that the jet engines agitated and blew this disturbed soil exposing Petitioner to an increased risk and resulted in him contracting blastomycosis. Petitioner's contraction of blastomycosis originated from his employment as a ramp service man as he was exposed to disrupted soil from the expansion project, which was further agitated and brought airborne by wind and jet engines. The evidence showed Petitioner was involved in no other hobbies in which he would have been exposed to disturbed soil (gardening/camping) and his only trip, one to Wisconsin, was for a few hours and an indoor visit, to visit his terminally ill mother-in-law, a double amputee in an assisted living facility. (Tr. pp 29-30). The extent of Petitioner's outdoor activities prior to the occupational exposure was eating with his wife in downtown Arlington Heights or taking his dog for a walk. (Tr. p 34). The evidence appears to unequivocally demonstrate that Petitioner had no other possible exposures to blastomycosis other than his job as a ramp service-man at United and that Petitioner's job at United Airlines, Inc., which caused him to be exposed to and infected with blastomycosis.

Overall, regarding causation, Petitioner's current condition of ill-being of occupational acquired blastomycosis infection was caused or aggravated by Petitioner's work-related exposure to soil particles and other contaminants he would encounter when unloading and taxing plants during his work for respondent United Airlines, at O'Hare airport from November and December 2019. The Arbitrator has been persuaded that Petitioner breathed in fungal spores from this ramp work for United Airlines and acquired his blastomycosis infection. This finding is based upon the persuasive opinions of Dr. Fletcher, the testimony of Petitioner and the medical records as a whole.

Regarding causation of the secondary COVID-19 infection, it is undisputed Petitioner was receiving treatment for his fungal lung infection in the hospital setting. While Petitioner had an appointment on 4/21/20 with Dr. Larson and a prior ER visit on 4/13/20, he was also going twice a week to the hospital for lab work during this time, which D. Sadek does not mention. The Arbitrator therefore finds it reasonable that Petitioner then contracted COVID-19 during one of the multiple medical appointments during this April time period, as there is no other credible exposure source. As a result, petitioner currently presents with resolved blastomycosis fungal infection and secondary COVID-19 infection which resulted in scarring on the lungs with granulomas from the fungal infection and viral pneumonia caused by COVID-19, per Dr. Fletcher. The Arbitrator relies on the opinions of Dr. Fletcher that Petitioner currently suffers from respiratory impairment as well as proximal muscle weakness caused directly by blastomycosis. The COVID-19 infection also caused further multi-system damage that caused severe functional loss. (Px29).

In conclusion, the Arbitrator finds that it is more likely than not, more probable than not, that Petitioner contracted the Blastomycosis infection at work and then later contracted COVID-19 virus in the hospital setting at one of his many April medical visits and not from another source like his wife. The Arbitrator is persuaded by petitioner and his wife that she was asymptomatic (along with her son) and that she did not test positive until after petitioner went into the ER. It is also undisputed Petitioner was actively treating for the occupational acquired fungal infection at the time he became infected with COVID-19. Having already found that petitioner's blastomycosis infection arose out of and in the course of his employment with Respondent, the Arbitrator further finds the COVID-19 infection and sequela arose out of and was in the course of Petitioner's employment and is also causally related to his employment with Respondent for the reasons listed above.

The Arbitrator notes that Petitioner's condition has severely deteriorated as a result of his work-related blastomycosis infection, which was complicated by his contraction of COVID-19. The Arbitrator relies on Dr. Fletcher's clinical impression, which was made within a reasonable degree of medical certainty, of multi-system permanent impairment from the exposure at work that caused the acute fungal infection that required hospitalization and ended up being further complicated because of Petitioner's contraction of COVID-19 while treating for his blastomycosis. (Px 30, Dr. Fletcher Dep. p 33)

Having found that Petitioner's blastomycosis and COVID-19 claim should be adjudicated under the ODA, and after considering the entire record, the Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that both blastomycosis and COVID-19 exposures

and infections arose out of and were in the course of Petitioner's employment and are causally related to his employment with Respondent.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. *White v. Illinois Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. *Id.* Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. *Eileen Farina v. State Farm Mutual Insurance*, 2014 Ill. Wrk. Comp. LEXIS 205, *9-10, 14 IWCC 210; *See Gano Electric Contracting v. Industrial Comm'n (Moore)*, 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994). A claim is barred only if no notice whatsoever has been given. *Silica Sand Transport, Inc. v. Industrial Comm'n*, 197 Ill. App. 3d 640, 651 (1990). "If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced." *Id.* Compliance with the notice requirement is achieved when the employer is given the facts related to the accident within the statutory period. *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87, 95 (1980).

Petitioner filed a claim for Occupational disease as a result of his exposure at work on February 11, 2020. Section 6(c) of the Occupational disease Act only requires notice be given to the employer "as soon as practicable after the date of disablement." Moreover, Section 6(c) states that failure to provide such notice does not give rise to a defense to defeat the claim unless such failure "substantially prejudices the rights of the employer."

The Arbitrator finds that Petitioner provided proper notice as required under the Occupational Disease Act. In addition, the Arbitrator believes Petitioner in his testimony that he complained about the increase in dust and debris to his supervisors, Petitioner reported to his ramp supervisors, Nick Graham and Terry Placzek. He told them there was something wrong there, and he could not breathe. (Tr. 27). Petitioner explained that he told them about the dirt and sediment in the air from the excavating that was going on around him. (Tr. 27).

The evidence in this case demonstrates Petitioner made his employer aware of his concerns regarding the occupational exposure from increased dust and debris on the tarmac while still working his position at United. In addition, Petitioner provided notice by informing United of his intent to pursue a worker's compensation case as soon as practicable in accordance with the Section 6(c) of the Act.

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 her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. Having found Petitioner's current condition of ill-being is causally related to the occupational exposure the Arbitrator finds the medical services provided to Petitioner were reasonable and necessary to treat his occupational exposure. The Arbitrator finds that Petitioner, as a result of his occupational blastomycosis infection, Petitioner was exposed to COVID-19 while treating in and out of the hospital for his blastomycosis. Dr. Fletcher found within a reasonable degree of medical certainty that Petitioner's present condition is related to his occupational exposure to spores during the O'Hare expansion project stirring up soil, which was complicated by getting COVID-19. Dr. Fletcher attributing the COVID-19 infection to the occupational illness given that Petitioner developed COVID-19 while he was immunocompromised and in and out of the hospital for his fungal infection, right at the start of the pandemic when there was no vaccine or any effective anti-viral medication.

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).

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to occupational exposure and casual connection, Petitioner's reasonable and necessary treatment for the blastomycosis and COVID-19 infections, through the date of trial, would be casually related.

The Arbitrator notes that Petitioner's medical bills incurred are in dispute. However, the parties stipulated that some medical charges have been paid by Petitioner's group health insurance obtained through his employment with Respondent. (Arb. Ex. 1 and Rx4) Respondent is entitled to Section 8 (j) credit for the paid bills and shall be given a credit for medical benefits that have been paid. The parties stipulated to an 8(j) credit of \$964,323.50. Respondent shall hold the Petitioner harmless for any subrogation or reimbursement claim by or on behalf of the group health insurance carrier. See also *Perez v. Illinois Workers' Compensation Comm'n*, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. Further, the Arbitrator notes that Respondent's own expert found Petitioner's treatment for the blastomycosis and COVID-19 infections and sequela to be reasonable and necessary however, not causally related nor were they occupational diseases in his opinion. However, once again the Arbitrator relies on the opinions of Dr. Fletcher here. 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 from:

Northwest Community Hospital:	\$46,682.51
Patricia Larson M.D. & Associates:	\$11,017.00
Alexian Brothers Medical Care Group:	\$38,666.00
Alexian Brothers Medical Center:	\$1,018,009.81
Kindred Chicago Central Hospital:	\$156,228.80
Alexian Rehabilitation Hospital/Shirley Ryan Ability Lab:	\$226,041.16
Elk Grove Medical Associates:	\$522.00
Edward Trudeau, M.D.:	\$6,648.00

The Arbitrator finds the above medical bills are charges for treatment that was reasonable and necessary to treat Petitioner's occupational related disease and medical conditions.

Respondent shall pay, pursuant to the fee schedule, the above-referenced unpaid medical bills, which are included in Petitioner's Exhibits 20-28 (with supporting medical records provided in Px9-19). Respondent shall receive a credit against the above award of bills, pursuant to Section 8(j) for any medical bills paid by the employer sponsored health plan, as explained above.

Issue K, whether Petitioner is entitled to any prospective medical care, 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. The Arbitrator finds that Petitioner has not reached maximum medical improvement. Petitioner continues to require medical care to cure and relieve him from his occupational exposure to blastomycosis and COVID-19 and sequela.

The Arbitrator finds that Petitioner requires additional medical care because of his occupational exposure. Dr. Fletcher found petitioner is permanently disabled due to a combination of cognitive, neurological, and respiratory issues. (Px 29, pg 6) The fungal infection did not spread outside his respiratory system (pg. 9). He opined it was likely his cognitive impairment is related to his COVID-19 infection and his neurogenic weakness was exacerbated by his COVID-19 infection. (Px. 29, pg 9). Dr. Fletcher opined that petitioner is unemployable due to respiratory impairment as well as proximal muscle weakness caused directly by blastomycosis. He notes the Covid-19 infection caused further multisystem damage that caused severe functional loss. (Px. 29, pg. 9)

On exam, Dr. Fletcher noted petitioner had primarily complaints in his knees and feet as well as some pain in his chest. He was assessed with sensorimotor neuropathy based on the exam in a stocking glove sensory loss pattern. He had weakness in both upper and lower extremities. Petitioner also had impaired cognition. His speech was not fluid and he had difficulty expressing his words. The doctor clarified that the neuropathy and cognition issues were more likely related to the long COVID-19 rather than the blastomycosis. (Px. 30, pg 25, 38) The respiratory issues would be due to both the blasto and the COVID-19. (Px 30, pg 38) Dr. Fletcher was initially hired as an IME but has also recommended durable medical equipment, home health assessment, mental health counseling, cognitive retraining, physical therapy, home health care, updated vaccinations, and supplemented oxygen for Petitioner after his exam. Dr. Fletcher opined that petitioner currently presents with resolved blastomycosis fungal infection and

secondary COVID-19 infection which resulted in scarring on the lungs with granulomas from the fungal infection and viral pneumonia caused by COVID-19. The Arbitrator once again relies on the opinions of Dr. Fletcher that Petitioner currently suffers from respiratory impairment as well as proximal muscle weakness caused directly by blastomycosis, as explained above. The COVID-19 infection also caused further multi-system damage that caused severe functional loss. (Px29). Dr. Fletcher opined that petitioner suffered multi-system cognitive, neurological, and respiratory permanent impairment from his occupational exposures and infections. Petitioner was also seen by Dr. Edward Trudeau on referral from Dr. Fletcher on March 30, 2023. Dr. Trudeau performed a nerve conduction study test in the upper and lower extremities. The never conduction study demonstrated generalized axonal sensory- motor neuropathy (polyneuropathy).

The Arbitrator, after reviewing the entire record, finds the treatment recommendations and medical opinions of Dr. Fletcher and Dr. Trudeau to be persuasive, as well as reasonable and necessary. The Arbitrator also notes that both Dr. Fletcher and Dr. Sadek, Respondent's Section 12 examiner, agree Petitioner needs additional medical treatment, has not reached MMI and cannot return to work yet, despite Dr. Sadek disagreeing with the occupational exposure and causation of petitioner's condition of ill-being. The Arbitrator also observed Petitioner's demeanor and physical condition and corroborated disability at trial and finds the medical treatment recommended by Dr. Fletcher to be reasonable and necessary to treat his current condition of ill-being.

Therefore, Respondent shall authorize and pay for the following, reasonable and necessary medical treatment as recommended by Dr. Fletcher: physical therapy, mental health counseling, home health care, and the home health assessment.

Issue L, 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 TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Id.* When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force. *Id.* The touchstone for determining whether claimant is

entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id.* at P40.

Having found Petitioner sustained a compensable condition of ill-being arising out of in in the course and scope of his employment and that his condition of ill-being is causally related to his exposure to blastomycosis and COVID-19 at work, any periods of temporary total disability incurred would be the responsibility of Respondent.

Petitioner alleges, and the medical records support, that Petitioner was temporarily and totally disabled for the period of February 11, 2020 through August 30, 2024 a period of 237 and 2/7 weeks. Respondent did not pay any TTD benefits for the time which the Petitioner was authorized off work by his treating physicians and in fact did not work. No evidence was introduced that Petitioner was able to work or did work for said time. Respondent's dispute as to TTD is liability based. Further, Petitioner requires ongoing medical treatment and has been completely restricted from all work by Dr. Fletcher. (Px. 29, Dr. Fletcher Report p 6). Although his condition may not be expected to improve, Petitioner still requires further medical treatment for his injuries. The Arbitrator notes that Petitioner's last day of exposure and work was 2/11/20 however TTD per the stip sheet (Ax1) is claimed from 2/13/20 through present (8/30/24: day of trial). Having found in Petitioner's favor on the issues of occupational exposure and causation, therefore, the Arbitrator finds and awards that Petitioner 237 and 2/7 weeks of TTD benefits for the period of February 13, 2020 through August 30, 2024.

Respondent shall pay Petitioner temporary total disability benefits of \$880/week for 237 2/7 weeks commencing February 13, 2020 through August 30, 2024, as provided in Section 8(b) of the Act.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:



Jacqueline C. Hickey
Arbitrator

2/14/25
Date

February 18, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011310
Case Name	Gregory Carriglio v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0029
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Charles Fanucchi
Respondent Attorney	James Jackson

DATE FILED: 1/30/2026

/s/ Raychel Wesley, Commissioner

Signature

Under §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.

January 30, 2026

RAW/wde

/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	20WC011310
Case Name	Gregory Carriglio v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Charles Fanucchi
Respondent Attorney	James Jackson

DATE FILED: 5/7/2025

*/s/ Rachael Sinnen, Arbitrator*_____
Signature**INTEREST RATE WEEK OF MAY 6 2025 4.09%**

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
AMENDED ARBITRATION DECISION

Gregory Carriglio

Employee/Petitioner

v.

Chicago Transit Authority

Employer/Respondent

Case # **20** WC **11310**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **March 5, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 3, 2019**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$91,208.00**; the average weekly wage was **\$1,754.00**.

On the date of accident, Petitioner was **64** years of age, *married* with **1** dependent children.

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

Respondent shall be given a credit of **\$100,137.40** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$100,137.40**.

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

ORDER

The Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020.

Respondent shall pay Petitioner directly for the outstanding medical services itemized in *Petitioner's Exhibit 8* (for dates of service July 13, 2019 through and including May 20, 2020), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **\$1,169.33 per week** for **59 weeks**, commencing **April 4, 2019** through and including **May 20, 2020**, as provided in Section 8(b) of the Act. *Respondent shall be given a credit of \$100,137.40 for temporary total disability benefits that have been paid.*

The Arbitrator makes an award of **7.5%** loss of use of the *person as a whole* under Section **8d2** which corresponds to **37.500 weeks** of permanent partial disability benefits at a weekly rate of **\$813.87**. See Conclusions of Law for Arbitrator's considerations under §8.1b(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.



MAY 7 2025

Signature of Arbitrator

Gregory Carriglio,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 20WC11310
Chicago Transit Authority,	)	
	)	
	)	
Respondent.	)	

This matter proceeded to hearing on March 5, 2025 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing under the Illinois Workers' Compensation Act "Act." Issues in dispute include accident, causation, average weekly wage, unpaid medical bills, temporary total disability "TTD" benefits, Respondent's credit, the nature and extent of the injury, and penalties/attorney's fees under Sections 19k, 19l, and 16 of the Act. Arbitrator's Exhibit "AX" 1.

At trial Petitioner testified that he was employed by Respondent, Chicago Transit Authority (CTA), as a union electrician since February 1998. His work involved maintaining, repairing, and updating heavy construction equipment used on the rail lines, including both field and shop assignments. These duties required frequent lifting of heavy components such as batteries and cylinders—some weighing up to 300 pounds—often without the assistance of hoisting equipment. Petitioner regularly worked overhead, climbed ladders, and operated various tools including pneumatic and battery-powered devices. He estimated that 60–70% of his tasks involved working with his arms above his head. He was assigned to work alongside machinists and stated that he performed the full range of job responsibilities without restriction throughout his employment up to April 2019. Tr. 8-16

Petitioner testified that his union position required a minimum 40-hour workweek, consisting of eight-hour days, with an additional mandatory on-call requirement of approximately 10 extra hours per week. He explained that emergency call-ins were common and not optional unless he was on vacation. Petitioner testified that he consistently worked overtime, estimating up to 100 hours at times and approximately 200 hours for the year. Petitioner explained that his role required him to

be on-site for various projects, ensuring that equipment functioned properly for large work crews in all weather conditions. Petitioner testified that his hourly wage as of April 2019 was approximately \$43.85, with overtime paid at time-and-a-half for hours worked beyond eight in a day or 40 in a week. According to his pension records, in some years he earned over \$115,000 due to the consistent overtime. He was paid electronically and had access to pay records online. Tr. 15-17, 25, 52-54.

Petitioner's Prior Medical Condition

Petitioner testified that he had previously undergone knee surgeries, including partial replacements in both knees approximately 20 years ago, as well as shoulder surgeries in the 1980s. Despite these procedures, he reported no restrictions on his ability to perform his job duties prior to April 2019. Petitioner testified that he was diagnosed with diabetes around 2012 and was under treatment, including medication and care from a podiatrist for occasional diabetic foot ulcers. He stated that these medical conditions, including the ulcers, did not cause him to miss work. Tr. 18-27.

Petitioner testified that beginning around 2017, he received annual PRP (platelet-rich plasma) injections in both shoulders from his long-time physician, Dr. Prodromos, to manage his pain. Petitioner testified that he scheduled his PRP injections during vacation weeks and did not miss any work. Petitioner testified that with the PRP injections he was physically capable of performing all required duties of his position, including lifting weights of 70 pounds or more, as required by CTA's minimum weight class. Tr. 51-52.

Medical records prior to the work accident were submitted into evidence and show that Petitioner presented to Dr. Prodromos in August 2017 for bilateral shoulder pain following a history of bilateral shoulder surgeries 25-30 years ago. Petitioner was not asked to rate his pain but it was noted the Petitioner's complaint was "severe." It was noted that a right MRI shows a small full thickness rotator cuff tear of his right supraspinatus and also arthrosis. Dr. Prodromos ordered an MRI of the left shoulder and wrote that Petitioner might be a candidate for PRP injections of possible surgical repair of the right rotator cuff. Dr. Prodromos noted that Petitioner was an electrician and wanted to work an additional 5 years. PX2, pp. 109-113.

Petitioner returned to Dr. Prodromos for PRP injections in both shoulders and, in December 2017, Petitioner reported 80% improvement in the left shoulder after 1 injection and 55% improvement in the right shoulder after 2 injections in December 2017. Petitioner was not asked to rate his pain but Dr. Prodromos described Petitioner's complaints as "mild and moderate." PX2, pp. 84-85.

In August 2018, Dr. Prodromos noted that Petitioner continued to have moderate right shoulder pain that interrupts sleep. Dr. Prodromos wrote that Petitioner is able to function and is reasonably comfortable if he does not stress his shoulder but lacks strength. It was noted that joint replacement was discussed but repeat PRP were recommended as Petitioner had reasonable results from past injections. Petitioner was referred to Dr. Gordon for a painful left knee. PX2, pp. 81-83.

Petitioner returned to Dr. Prodromos for a repeat PRP injection on January 2, 2019 and during his February 4, 2019 follow up reported 60% improvement with another injection scheduled for June 2019. Dr. Prodromos described Petitioner's complaint in February 2019 as "mild." PX2, pp. 72-79.

Alleged Accident of April 3, 2019 and initial treatment

Petitioner testified that on April 3, 2019, he was working in the shop at CTA when he sustained an injury while retrieving special equipment from his toolbox located near the break area. As he was walking, his pants caught on the upper part of a steel cylinder—estimated to weigh approximately 350 pounds—which caused him to trip and fall onto the concrete floor. In an attempt to break his fall, Petitioner extended his right arm. He testified that his right arm, right side, and left (*sic*) knee hit the ground. Following the fall, he was unable to get up on his own and required assistance from nearby management personnel, including a foreman, two assistant foremen, and a general manager. Petitioner reported feeling disoriented and unable to assess the extent of his injuries immediately. Petitioner testified that he attempted to walk, realized that he could not move his arm properly, and requested medical treatment from his supervisors. Tr. 27-32.

Summary of Medical Records

On April 3, 2019, Petitioner presented to Concentra. Assessment included contusions of the chest wall, right shoulder and right elbow. Petitioner was placed on work restrictions. Petitioner's knees were not mentioned. PX1, pp. 1-4.

On April 5, 2019, Petitioner returned to Concentra, work restrictions were continued and physical therapy was recommended that Petitioner started that same day at Concentra. It was noted that Petitioner reported injuring his right (*sic*) knee, shoulder and ribs when he fell on his right side at work. PX1, pp. 5-8.

Petitioner continued treatment at Concentra and was eventually seen by orthopedic surgeon, Dr. Tu, on April 24, 2019. Impression was persistent right shoulder pain with likely aggravation of preexisting degenerative changes. Dr. Tu recommended continued PT, continued work restrictions, an MRI and an injection that was performed that same day. PX1, pp. 44-46.

On May 3, 2019, Petitioner underwent an MRI of the right shoulder at Chicago Ridge Medical Imaging. Impression included severe chronic degenerative arthropathy of the glenohumeral joint with effusion, mild impingement of the rotator cuff, articular surface partial thickness tear of the distal supraspinatus tendon (indeterminate in etiology), diffuse chronic degeneration/tear of the glenoid labrum and suspected postsurgical changes in the long head of the biceps tendon. PX1, pp. 51-53.

Petitioner testified that he was unable to continue treatment with Dr. Tu and was advised to return to Dr. Prodromos. It was Petitioner's understanding that this was due to his termination. T. 38-40.

On July 12, 2019, Petitioner returned to his prior doctor, Dr. Prodromos, with a history of an injury at work due to a fall on his right outstretched arm on April 3, 2019. Petitioner reported sharp pain and demonstrated decreased range of motion and weakness with positive Hawkin's sign and positive Neer's sign on exam. Petitioner was not asked to rate his pain but Dr. Prodromos described his complaint as "severe." Petitioner reported that he underwent physical therapy which helped. Dr. Prodromos prescribed additional physical therapy. PX2, pp.68-71. Petitioner was given an off work note. PX2, p. 115. The prescribed physical therapy was non-certified by utilization review because Petitioner had already undergone physical therapy and it was unclear why Petitioner could not transition to the home exercise program. It was noted that Petitioner's "failure to return to work, coupled with the residual strength and range of motion deficient present on the date in question, taken together, suggested that [Petitioner] has effectively plateaued from a functional perspective with prior care." PX2, pp. 135-139.

On August 2, 2019, Petitioner returned to Dr. Prodromos with improving symptoms but still showed decreased range of motion, stiffness, and sharp pain with specific activities. An MRI of the right shoulder was ordered. PX2, pp.64-67. The MRI was non-certified by utilization review because Petitioner had already undergone an MRI in May 2019 and treatment notes did not indicate a significant change in symptoms or findings suggestive of significant new pathology. PX2, pp. 140 – 144.

On August 8, 2019, Petitioner underwent a repeat MRI of the right shoulder without contrast at 3T Imaging. The MRI showed arthrosis, tears of the supraspinatus, infraspinatus and interstitial tendons, tears of the biceps tendon, tears of the glenoid and subacromial/subdeltoid bursitis. PX2, pp. 121-122.

On August 16, 2019, Petitioner returned to Dr. Prodromos and a PRP injection was ordered as prior injections had good results. Petitioner was not asked to rate his pain but the notes indicate that Petitioner's "complaint is moderate." PX2, pp. 59-63. Petitioner was given an off work note for four weeks. PX2, p. 116. The PRP injection was non-certified by utilization review stating that medical necessity was not established. It was noted however that only Dr. Prodromos' August 2019 treatment record was available and the MRI report or prior records were not available to the UR examiner. PX2, pp. 145-151.

Petitioner returned to Dr. Prodromos on September 9, 2019, and it was noted that Petitioner was in a wheelchair because he fell yesterday and had pain in his knee. Petitioner was taken to the hospital via ambulance as Petitioner was in atrial fibrillation. The treatment note does not address Petitioner's right shoulder. PX2, pp. 55-57.

Petitioner returned to Dr. Prodromos on October 25, 2019 but did not undergo any treatment due to left knee issues. Petitioner's complaint was described as "mild and moderate." Petitioner was given an off work note that was marked as "indefinite" and is the last work status note in the records. PX2, p. 119.

Petitioner did not return to Dr. Prodromos until May 20, 2020 but still did not undergo any treatment due to left knee issues. Petitioner's right shoulder complaint was described as "mild." Physical examination did not indicate any positive Hawkin's sign nor positive Neer's sign but did

indicate decreased range of motion. It was noted that Petitioner had a left total knee replacement in September 2019, had an infection, and now required a moderate two stage replacement. Petitioner was requesting a PRP injection for the right shoulder. Dr. Prodromos noted that he was going to order physical therapy of the shoulder since Petitioner would be going anyways for his knee replacement. PX2, pp. 45-54.

From June 19, 2020 to August 17, 2020, Petitioner underwent physical therapy at ATI. PX4. Physical therapy was noncertified by utilization review because there was no evidence of significant and sustained positive gains from prior sessions completed and no evidence of recent reinjury, flareup, or exceptional factors noted. PX4, pp.5-9.

On December 28, 2020, Petitioner returned to Dr. Prodromos for another PRP injection in the right shoulder and reported 50% improvement with pain when he followed up via telehealth. Petitioner's complaint was reported as mild. PX2, pp. 36-39, 42.

On March 10, 2021, Petitioner returned to Dr. Prodromos and reported doing reasonably well as long as he doesn't elevate his right arm. Petitioner's complaint was described as mild. Physical therapy was ordered to build up strength. PX2, pp. 31-35.

Petitioner started physical therapy with Angelo Dizon, PT, on March 30, 2021. PX2, pp. 18-30.

On November 17, 2021, Petitioner returned to Dr. Prodromos with complaints of right shoulder pain, stiffness, and decreased range of motion. Petitioner's complaint was described as mild. Another PRP injection was recommended and administered. PX2, pp. 8-12. (PX. 2 pp.8-12)

On December 22, 2021, Petitioner returned to Dr. Prodromos and reported that symptoms were improving. Petitioner's complaints were described as moderate. PX2, pp. 4-7.

On August 8, 2022, Petitioner was examined by Dr. Daniel Troy at the request of Respondent pursuant to Section 12 of the Act. Dr. Troy opined that the April 3, 2019 work accident may have caused a subjective temporary increase in pain but did not change his case and/or treatment, accelerate, propagate, or aggravate his pre-existing long term degenerative changes to his right shoulder. When asked if Petitioner's treatment is reasonable and necessary, Dr. Troy responded that Petitioner should continue his care and treatment, which has been ongoing since 2017, but noted that such treatment is "non-work compensable." RX1; Dep. Ex. 2.

Petitioner continued to follow up with Dr. Prodromos for PRP injections on July 15, 2022, March 8, 2023, May 10, 2024, and February 7, 2025. PX7, pp. 15-16, 19-26, 30-31. Petitioner continued to report benefits from the injection but continued to demonstrate decreased range of motion, stiffness and reported pain with activity.

Deposition Testimony of Respondent's Section 12 Examiner, Dr. Daniel Troy

Dr. Daniel Troy testified via evidence deposition on October 9, 2024. Dr. Troy testified that he examined Petitioner on August 8, 2022, on behalf of Respondent pursuant to Section 12 of the

Act. Dr. Troy reviewed records starting from August of 2017, prior to the date of accident, outlining Petitioner's multiple PRP injections and osteoarthritis diagnosis. RX2, p. 9.

Dr. Troy testified that he performed a physical examination and noted that both shoulders are almost identical on examination. Petitioner had significant limitations to range of motion, significant crepitation, and a significant endpoint consistent with advanced end stage degenerative changes. RX2, pp. 14-15.

When asked about causation, Dr. Troy said,

"In regards to exacerbation, acceleration, or propagation of arthritic changes to his right shoulder, that did not occur. [Petitioner's] currently back in the same regimen he had been in before, receiving PRP injections every two, three, or six months, and sometimes on an annual basis secondary end stage arthritic change to his shoulder. [Petitioner] was in need of a total shoulder arthroplasty prior to the fall and event. The event did not change this course, propagate this course, and/or accelerate this course."

RX2, p. 22.

When asked about Petitioner's ability to work before the accident but not after, Dr. Troy opined that Petitioner's statement that he is more symptomatic after the work accident is purely subjective because Petitioner had no change in his shoulder and was symptomatic before and after the accident. RX2, pp. 41-42.

When asked if Petitioner was capable of working full-duty, Dr. Troy opined that Petitioner could have returned to full duty work in June or July 2019 assuming any type of contusions or abrasions had resolved. RX2, pp. 25-26.

Dr. Troy also noted that Petitioner's left knee infection in September 2019 was not causally connected to the April 30 2019 fall noting that Petitioner was an uncontrolled diabetic and the infection did not occur for approximately five months after the accident. RX2, pp. 21-23.

Deposition Testimony of Petitioner's treating surgeon, Dr. Chadwick Prodromos

Dr. Prodromos testified via evidence deposition on June 16, 2022. PX3. Dr. Prodromos testified that he is an orthopedic surgeon with 38 years of experience. Dr. Prodromos operates the Illinois Sports Medicine and Stem Cell Center, where he treats patients, including those with osteoarthritis, using platelet-rich plasma (PRP) injections. He described PRP therapy as a method that utilizes centrifuged patient blood to concentrate platelets, which is then injected to reduce inflammation and promote tissue healing, offering benefits over cortisone and potentially delaying or avoiding joint replacement. PX3, pp. 4-9.

Dr. Prodromos testified that prior to the April 2019 work accident, Petitioner had been under his medical care and receiving periodic PRP injections to manage his shoulder arthritis. Dr. Prodromos noted that the treatments had successfully maintained his function and enabled him to continue working. PX3, pp. 9-12

Dr. Prodromos first saw Petitioner following the April 2019 work accident on July 12, 2019. Dr. Prodromos noted that Petitioner reported a workplace accident that had occurred on April 3, 2019. Petitioner stated he had tripped over a cylinder while walking to a garage door at work, extending his right arm to break the fall and striking the cement floor. Dr. Prodromos testified that at the July 2019 visit, Petitioner exhibited decreased range of motion and tested positive for Hawkins and Neer signs, both indicating rotator cuff irritation. Dr. Prodromos opined that Petitioner had aggravated his preexisting arthritis from the fall at work. Dr. Prodromos explained that following the April 2019 work accident, Petitioner was unable to perform his regular job due to increased pain, marking a clear deterioration in his condition and functional capacity as compared to his pre-accident status. PX3, pp. 9-12

Dr. Prodromos testified that he eventually ordered an MRI, which revealed a partial-thickness tear in the right shoulder. When asked about his August 2019 visit, Dr. Prodromos testified that Petitioner was unable to return to full duty work because of his pain explaining that Petitioner always had decreased range of motion but his pain was worse after the April 2019 fall. PX3, pp. 13-14.

Dr. Prodromos testified that PRP injections were planned but postponed due to other medical issues in September and October 2019. PX3, pp. 15-16. Subsequent visits revealed no significant improvement, with Petitioner continuing to suffer from pain, restricted motion, and an inability to lift his arm sufficiently to meet the demands of his job. Dr. Prodromos confirmed that Petitioner continues to receive PRP injections when his health permits, which offers some relief by reducing his symptoms from “terrible to less terrible.” However, Petitioner has never regained the shoulder function he had before the April 2019 fall. PX3, pp. 16-19.

Overall, Dr. Prodromos opined that Petitioner’s April 2019 fall at work exacerbated his preexisting shoulder arthritis, pushing him beyond the already marginal capacity he had maintained before the injury. Dr. Prodromos specifically stated,

“So he had arthritis for a long time, and he kind of limped along and worked with it. And then after the fall, it just kind of put him over the edge. And even though we were doing the PRP, he never really got back to a point where he could function as an electrician.

* * *

It was an exacerbation of preexisting arthritis. It wasn't exactly quiescent, because it hurt him, but he was marginal beforehand, anyway, as to whether he could work. But you know, he got by, just barely got by. But after the fall, there was no way.”

PX3, p. 20

Dr. Prodromos testified that Petitioner requires ongoing PRP as necessary and activity modifications. Dr. Prodromos opined that shoulder replacement should unlikely give Petitioner full use of his right shoulder and unlikely return him to a full labor job such as an electrician. PX3, pp. 21-22.

In this cross-examination, Dr. Prodromos confirmed that Petitioner had long-standing arthritis and rotator cuff issues in his shoulder prior to the work fall in April 2019. Dr. Prodromos noted that while Petitioner had a history of shoulder dislocations and surgeries from the 1980s, there was no evidence of a full rotator cuff tear prior to the April 2019 work accident. PX3, pp. 24-40. On re-direct, Dr. Prodromos testified that falling on an outstretched right arm could cause damage to an arthritic glenoid or could aggravate an already damaged rotator cuff. Either way, Dr. Prodromos noted that Petitioner's condition of the right shoulder was substantially worse after the April 2019 work fall. PX3, p. 41.

Petitioner's Current Condition

Petitioner testified that he does not want shoulder replacement surgery because he did not feel it would improve his condition significantly or ability to return to work. Petitioner testified that Dr. Prodromos issued permanent work restrictions, administers PRP injections, which provide some relief and allow limited functionality, such as driving and minor household activities. Petitioner testified to significant ongoing limitations, particularly in his right arm, which he cannot lift above shoulder height and which restricts even simple tasks such as dressing or lifting a gallon of milk. T. 40-47

Petitioner testified that he has not returned to work since the date of the accident and has not received offers of vocational rehabilitation or alternative employment from Respondent. T. 47. Petitioner testified that he was forced into retirement after receiving a letter from the CTA terminating his health insurance coverage. Petitioner testified that he contacted the CTA pension board, which assisted him in securing insurance through retirement benefits. Petitioner explained that prior to the April 2019 work accident, he had not planned to retire until age 67 to qualify for full Social Security benefits and reach the 25-year pension threshold at CTA, which would have increased his retirement benefits. However, due to the loss of insurance and lack of other options, he felt compelled to retire earlier than planned. T. 54-56.

AMENDED CONCLUSIONS OF LAW

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

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

Petitioner testified that on April 3, 2019, he was working as an electrician in the shop for Respondent when he sustained an injury while retrieving special equipment from his toolbox. As he was walking, his pants caught on the upper part of a steel cylinder which caused him to trip and fall onto the concrete floor.

Petitioner's credible testimony regarding the time, place and circumstances of the injury shows that the accident occurred in the course of employment. Further, Petitioner was performing an act that he was reasonably expected to perform incident to his duties as an electrician. Thus, the accident also arises out of Petitioner's employment with Respondent.

The Arbitrator finds that Petitioner's accident *did* arise out of and in the course of Petitioner's employment by Respondent.

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

Dr. Prodromos opined that Petitioner had aggravated his preexisting arthritis from the April 2019 work accident. Dr. Prodromos explained that Petitioner's inability to work due to increased pain marks a clear deterioration in his functional capacity. See PX3, pp. 9-12. While Dr. Prodromos testified that Petitioner's post-accident MRI revealed a partial-thickness tear in the right shoulder, his records from prior to the work accident also indicate that Petitioner had a tear seen on MRI. See PX2, pp. 109-113. The Arbitrator notes that Dr. Tu, who saw Petitioner once, also wrote that Petitioner likely sustained an aggravation of preexisting degenerative changes. See PX1, pp. 44-46. Respondent's Section 12 examiner, Dr. Troy, noted that Petitioner's statement that he is more symptomatic after the work accident is purely subjective. Dr. Troy noted that Petitioner has not sustained any changes in his shoulder due to the work accident and his treatment plan has remained unchanged since the accident. See RX2, pp. 41-42.

An increase in pain is sufficient, by itself, to establish an aggravation or acceleration of a preexisting condition. *Tazewell County v. Illinois Workers' Compensation Comm'n*, 2025 IL App (4th) 230754WC, ¶ 29 (finding that an asymptomatic preexisting condition that becomes painful as the result of work-related activity is compensable as an aggravation even in the absence of structural change in the preexisting condition). However, here, Petitioner's preexisting condition was symptomatic. As a result, the Arbitrator examines the medical records for Petitioner's documented complaints of pain before and after the work accident.

Petitioner's documented complaints of pain did increase following the work accident and then returned to their pre-accident levels by May 20, 2020. While Petitioner was not asked to rate his pain on a scale of 1 to ten, Dr. Prodromos would document whether Petitioner's complaint was mild, moderate or severe. Prior to the April 2019 work accident, Petitioner had been seen by Dr. Prodromos in February 2019 where he reported a 60% improvement from his prior PRP injection and his complaint was noted as "mild." See PX2, pp. 72-79. Following the April 2019 work accident, when Petitioner returned to Dr. Prodromos in July 2019, Petitioner's complaints were documented as "severe." Petitioner presented with positive Hawkin's sign and positive Neer's sign on physical examination. By May 20, 2020, Petitioner's right shoulder complaints were documented by Dr. Prodromos as "mild" and physical examination only noted decreased range of motion in the right shoulder, as it had pre-accident. Although Dr. Prodromos ordered physical therapy for Petitioner's shoulder in May 2020, he wrote that he was doing so as Petitioner would be going to physical therapy for his knee anyways. As Petitioner continued to treat with Dr. Prodromos, his complaints continued to be described as "mild" and only on occasion as "moderate" (as it had been prior to the work accident). The Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020.

The Arbitrator finds that Petitioner's *current* condition of ill-being *is not* causally related to the injury.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

No documents were submitted into evidence by either party showing the hours Petitioner worked or his earnings in the year prior to the work accident. Petitioner testified that he consistently worked a 40-hour workweek, with approximately 10 extra hours per week of mandatory overtime. Petitioner testified that his hourly wage as of April 2019 was approximately \$43.85 and he did not miss work prior to his accident. See Tr. 15-17, 25, 52-54. This evidence was un rebutted.

\$43.85 per hour times 50 hours a week corresponds to \$2,192.50. However, on the request for hearing form, Petitioner claimed an AWW of \$1,754.00 and Respondent disputed the issue claiming an AWW of \$1,632.68. See AX1; *Walker v. Industrial Comm'n (AmerenCIPS)*, 345 Ill. App. 3d 1084, 1088, 804 N.E.2d 135, 138 (4th Dist. 2004).

The Arbitrator finds that in the year preceding the injury Petitioner's earnings were **\$91,208.00** and the average weekly wage pursuant to Section 10 of the Act was **\$1,754.00**.

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:

Having found that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020, the Arbitrator denies any changes for medical services after May 20, 2020.

The Arbitrator further finds that the physical therapy at ATI from June 19, 2020 to August 17, 2020 (as itemized in PX6), was unreasonable and unnecessary based on the utilization review submitted into evidence. See PX4, pp.5-9.

The Arbitrator finds that the medical services that were provided to Petitioner from April 3, 2019 through and including May 20, 2020 *were* reasonable and necessary and Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services itemized in Petitioner's Exhibit 8 (for dates of service July 13, 2019 through and including May 20, 2020 only) pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Having found that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020, the Arbitrator denies any TTD benefits after May 20, 2020.

Based on the above, the Arbitrator finds Respondent liable for **59 weeks** of TTD benefits (**April 4, 2019** through and including **May 20, 2020**) at a weekly rate of **\$1,169.33** to be paid directly to Petitioner. Respondent's credit of \$100,137.40 for TTD paid will be addressed in Issue N below.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

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 statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as an electrician at the time of the accident and the Arbitrator finds that he *is* able to return to work in his prior capacity as a result of said injury. While Petitioner testified that he retired early due to his injury, the Arbitrator found that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020. As a result, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 64 years old at the time of the accident. The Arbitrator notes that Petitioner was towards the end of his working years. As a result, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that while Petitioner testified that he retired early due to his injury, the Arbitrator found that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020. As a result, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator gives *lesser* weight to this factor having found that Petitioner sustained a temporary aggravation of his preexisting right shoulder arthritis that returned to his pre-accident baseline on May 20, 2020. Petitioner underwent physical therapy at Concentra and Dr. Tu performed an injection. Petitioner's complaints of pain when Petitioner returned to Dr. Prodromos in July 2019 were described as severe and Petitioner presented with positive Hawkin's sign and positive Neer's sign on physical examination. By May 20, 2020, Petitioner's right

shoulder complaints were documented by Dr. Prodromos as “mild” and physical examination only noted decreased range of motion in the right shoulder, as it had pre-accident.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **7.5% loss of use of the person as whole** under **Section 8d2** which corresponds to **37.500 weeks** of permanent partial disability benefits at a weekly rate of **\$813.87**.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to impose penalties and fees upon Respondent given Petitioner’s prior medical history and issues on causation.

Issue N, whether Respondent is due any credit, the Arbitrator finds as follows:

Respondent submitted into evidence a TTD ledger showing payment of \$100,137.40 in TTD benefits. RX3. This evidence was un rebutted.

The Arbitrator finds that Respondent is entitled to a credit of \$100,137.40 for temporary total disability benefits already paid to Petitioner.

It is so ordered:



Arbitrator Rachael Sinnen

MAY 7 2025