

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC020712
Case Name	Insurance Compliance v. M&M Contracting II, Inc
Consolidated Cases	
Proceeding Type	Notice of Non-Compliance
Decision Type	Commission Decision
Commission Decision Number	26IWCC0167
Number of Pages of Decision	7
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Benjamin Pryde
Respondent Attorney	

DATE FILED: 6/1/2026

/s/ Frank Soto, Commissioner

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)
☐	PTD/Fatal denied
☒	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS DEPARTMENT OF INSURANCE
 INSURANCE COMPLIANCE DEPARTMENT,

Petitioner,

vs.

NO. 25 WC 20712
 24 INC 185

M & M CONTRACTING II, INC., and
 CARL B. MATTHEWS, individually and as officer,

Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

This matter comes before the Commission on Petitioner's action for penalties for the willful failure to comply with the requirements to maintain workers' compensation insurance pursuant to §4(a) of the Illinois Workers' Compensation Act (hereinafter, the "Act") and §9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission (hereinafter, the "Commission Rules"). Petitioner, represented by the Illinois Attorney General's Office, brought its motion before Commissioner Frank Soto in hearings held on January 6, 2026 and March 10, 2026 in Chicago, Illinois. Petitioner alleges Respondents knowingly and willfully failed to maintain mandatory workers' compensation insurance for 2,327 days from January 1, 2013 through September 30, 2013, April 1, 2014 through June 30, 2014, and June 1, 2015 through October 17, 2020. Proper and timely notice of the hearing dates was provided to Respondents. (PX 1-2, PX 13). Respondents did not appear in person or through counsel. A record was made.

I. Findings of Fact

Petitioner called Michael Montino, an investigator in the Workers' Compensation Division of the Illinois Department of Insurance (hereinafter, the "Department"), to testify. In his position, Mr. Montino investigates Illinois employers to determine whether they comply with the Act. Mr. Montino possessed direct personal knowledge of, and participated in, the Department's investigation into Respondents' business. The Department began its investigation in August of 2024 when it was notified of an injury case involving the Respondents.

Through its investigation, the Department obtained documents from the National Council on Compensation Insurance (hereinafter, "NCCI"). Mr. Montino testified that NCCI tracked workers' compensation insurance for businesses operating in Illinois, and pursuant to the Act, all workers' compensation insurance policies had to be registered with NCCI. The NCCI documents obtained from the Department's search for Respondent Carl B. Matthews, whom Mr. Montino identified as Respondent's business owner, were admitted as Petitioner's Exhibit 7. The documents establish that Respondent Matthews failed to maintain a workers' compensation policy from June 9, 2003 through September 14, 2011 and September 16, 2012 through July 14, 2025. However, the NCCI documents also show that Respondent Matthews did maintain a workers' compensation policy for a one-year period from September 15, 2011 through September 15, 2012.

The Department also obtained NCCI documents for Respondent M & M Contracting II, Inc. These NCCI documents, which were admitted as Petitioner's Exhibit 12, indicate that Respondent M & M Contracting II, Inc. failed to maintain a workers' compensation policy from April 29, 2004 through May 5, 2004, May 7, 2005 through September 14, 2011, and September 16, 2012 through December 12, 2024. It did otherwise maintain workers' compensation insurance for several periods of time from April 28, 2003 through April 28, 2004, May 6, 2004 through August 11, 2004, and September 15, 2011 through September 15, 2012.

The Department's investigation further confirmed that the Respondents were not self-insured during their periods of alleged non-compliance. Mr. Montino testified that companies could be granted permission to self-insure in place of obtaining workers' compensation insurance. Petitioner's Exhibit 8 contains certifications from the Illinois Office of Self-Insurance Administration that show no certificate of approval to self-insure was issued to Respondent M & M Contracting II, Inc. from April 3, 2018 through December 12, 2024 or to Respondent Matthews from November 14, 2015 through January 5, 2026.

Mr. Montino testified that the Act required certain employers to provide workers' compensation insurance to their employees. Mr. Montino testified that the Respondents' business was subject to the Act, because it was a construction company that fell under §3(1) and §3(2) of the Act's automatic coverage provisions. Therefore, Mr. Montino determined that the Act required the Respondents to maintain workers' compensation insurance for any employees.

During his investigation, Mr. Montino requested information from the Illinois Department of Employment Security as to the number of employees Respondents' business had. The responsive documents, which were admitted as Petitioner's Exhibit 11, show that Respondent reported between zero to three employees throughout various times from the first quarter of 2013 through the third quarter of 2016. Despite such documented employees, Mr. Montino testified that the certified records he obtained from the Illinois Department of Revenue, which were admitted as Petitioner's Exhibit 10, show that Respondents never filed taxes for any employees.

The Commission also takes judicial notice of the arbitration decision in the matter of *Samuel Porter v. M & M Contracting II, Inc., Carl B. Matthews, individually, M and M Contracting II, Inc., MM Contracting II, and the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund*, 20 WC 26599. (PX 9). In this decision, which was issued on

November 27, 2024, the Arbitrator found that Respondent Matthews was operating as a dissolved corporation subject to the provisions of the Act as of October 17, 2020. The Arbitrator explained that Respondent M & M Contracting II, Inc. was dissolved on November 13, 2015 and Respondent Matthews thereafter continued to operate the dissolved company in a sole proprietorship capacity. The Arbitrator determined that Respondent Matthews' activities continued to fall within the purview of §3(1) of the Act, because his business specialized in roofing, hot tar, shingles, and other construction services. The Arbitrator further found that the claimant was an employee of Respondent Matthews' business at the time of his October 17, 2020 work accident, and that neither Respondent M & M Contracting II, Inc. nor Respondent Matthews maintained workers' compensation coverage on said date. The Arbitrator thereafter awarded \$43,047.83 in TTD benefits, \$131,765.06 in medical expenses, and \$240,000.00 in PPD benefits.

Through inquiries made with the Illinois Secretary of State's Office, Mr. Montino identified Respondent M & M Contracting II, Inc.'s date of incorporation as June 9, 2003 and date of dissolution as November 13, 2015. (PX 5-6). Mr. Montino testified that the certified records from the Secretary of State's Office further listed Respondent's correct business name and its registered agent's address. Said records identified Respondent Matthews as the corporation's president and registered agent.

On August 27, 2024, Mr. Montino mailed a Notice of Non-Compliance to Respondent Matthews, individually and as president of M & M Contracting II, Inc., detailing the alleged periods of non-compliance with the requirements of §4(a) of the Act. Mr. Montino sent the notice to the two addresses that were listed for Respondent Matthews on the Secretary of State documents, specifically 11437 South Lowe Avenue and 600 East 51st Street in Chicago, Illinois. (PX 5-6). The Notice of Non-Compliance, which was admitted as Petitioner's Exhibit 3, identified Respondents' alleged period of non-compliance as March 15, 2004 through August 27, 2024. It further instructed the Respondents to submit evidence of compliance or otherwise respond in writing to the Commission within 30 days of its receipt of said notice. Shortly thereafter, on September 24, 2024, Mr. Montino also mailed Respondent Matthews a Notice of Informal Conference scheduled for October 24, 2024. Mr. Montino testified that no representative for the Respondents appeared on that date.

Mr. Montino testified that after mailing the two documents, he received a phone message from Respondent Matthews on October 1, 2024 inquiring as to the nature of his communication. Mr. Montino testified that he called Respondent Matthews back the following day on October 2, 2024 but was unable to reach him. Mr. Montino testified that he then left Respondent Matthews a message explaining the documents and advising him of a pending injury case involving one of his alleged employees. Mr. Montino testified he never thereafter received any information, documents, or proof to indicate that Respondents were exempt from the requirements of the Act.

Upon completion of his investigation, Mr. Montino determined that Respondents were required by the Act to provide workers' compensation insurance for its employees but failed to do so from April 29, 2004 through May 5, 2004, May 7, 2005 through September 14, 2011, and September 16, 2012 through December 12, 2024. Mr. Montino approximated that the premium cost for workers' compensation insurance for Respondents during said periods of non-compliance would have been between \$23,000.00 to \$30,000.00. He arrived at this calculation by considering

the periods in which Respondents did otherwise maintain an insurance policy, including from September 15, 2011 through September 15, 2012.

At the hearing, Petitioner asked the Commission to award the maximum penalty of \$500.00 per day for 2,327 days of alleged non-compliance from January 1, 2013 through September 30, 2013, April 1, 2014 through June 30, 2014, and June 1, 2015 through October 17, 2020, totaling \$1,163,500.00. In its subsequent brief, Petitioner noted that Respondent M & M Contracting II, Inc. had been dissolved since November 13, 2015 and requested that a penalty of \$899,500.00 be assessed only against Respondent Matthews for the 1,799-day period of noncompliance after the dissolution from November 14, 2015 through October 17, 2020. Petitioner represented that Respondent Matthews had continued operating under the dissolved corporate entity's name during this period. Petitioner did not otherwise seek reimbursement for the costs incurred by the Injured Workers' Benefit Fund in case number 20 WC 26599, in which Respondent Matthews was found to still be operating the dissolved corporation as of October 17, 2020. Mr. Montino believed that Respondents were no longer operating with employee workers at the time of the January 6, 2026 hearing.

II. Conclusions of Law

Pursuant to §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). Commission Rule 9100.90(a) similarly provides that any employer subject to §3 of the Act shall insure payment of compensation required by §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).

The Act mandates that certain employers are automatically subject to the provisions of the Act if they engage in specific business activities. 820 ILCS 305/3. Mr. Montino's testimony establishes that Respondents' business provided construction services that elicited the automatic coverage provisions of §3(1) and §3(2). Moreover, the Commission takes judicial notice of the arbitration decision rendered in 20 WC 26599, specifically finding that Respondent Matthews' activities fell under §3(1) of the Act because his business specialized in roofing, hot tar, shingles, and other construction services. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Act.

All employers who fall within the provisions of §3, as the Respondents do, are required to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. In this respect, the Commission first finds the Respondents failed to establish that they were given approval to self-insure, as confirmed by the Office of Self Insurance Administration's records. The Commission further finds both Respondents were in violation of the Act for failing to maintain workers' compensation insurance for a period of 527 days prior to Respondent M & M Contracting II, Inc.'s dissolution from January 1, 2013 through September 30, 2013, April 1, 2014 through June 30, 2014, and June 1, 2015 through November 13, 2015. Mr. Montino's testimony and the NCCI certifications establish that Respondents lacked workers' compensation insurance for these periods of non-compliance sought by Petitioner. Records from the Illinois Department of

Employment Security further show that Respondents had up to three employees during various times throughout its non-compliance.

The evidence further establishes that after Respondent M & M Contracting II, Inc. was dissolved on November 13, 2015, Respondent Matthews continued to operate the construction business under the dissolved corporate entity's name. The arbitration decision in 20 WC 26599 shows that as of the claimant's injury date of October 17, 2020, Respondent Matthews was still operating and had an employee who sustained a work injury that was not properly covered by insurance. As such, the Commission finds that Respondent Matthews is additionally liable for a period of 1,799 days from November 14, 2015 through October 17, 2020, during which he continued to operate the construction businesses without workers' compensation insurance.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, §4(d) of the Act states, in relevant part:

"Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section, ... the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer fails or refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d).

The Commission recognizes that Respondents had several intermittent periods of compliance where they maintained proper workers' compensation insurance policies for their employees. This demonstrates that the Respondents possessed knowledge of their requirement to maintain workers' compensation insurance. The Commission thus finds that Respondents knowingly and willfully failed to maintain proper workers' compensation insurance throughout the stated periods of non-compliance. The Commission determines that fines permitted under §4(d) of up to \$500.00 per day are appropriate against Respondent M & M Contracting II, Inc. and Respondent Matthews for a period of 527 days from January 1, 2013 through September 30, 2013, April 1, 2014 through June 30, 2014, and June 1, 2015 through November 13, 2015. This equates to a penalty of \$263,500.00. For the period of time thereafter that Respondent Matthews continued to operate as the dissolved construction business, the Commission assesses an additional award against Respondent Matthews for the period of 1,799 days from November 14, 2015 through

October 17, 2020. This equates to an additional award against Respondent Matthews only in the amount of \$899,500.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, M & M Contracting II, Inc. and Carl B. Matthews, individually and as officer of M & M Contracting II, Inc., pay the Illinois Workers' Compensation Commission \$263,500.00 pursuant to §4(d) of the Act. In addition to this amount, the Commission assesses a further award against only Respondent Matthews in the amount of \$899,500.00 for his continued failure to comply with §4(d) as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to Commission Rule 9100.90, once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission, or by an electronic format prescribed by the Commission and accepted by the Illinois Office of the Comptroller; 2) payment shall be mailed or presented within 30 days after the final Order of the Commission or the Order of the court on review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

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

June 1, 2026

R: 3/10/26

FJS/mek

046

/s/ Frank J. Soto
Frank J. Soto

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022211
Case Name	Barb McGrath v. Fer/Value USA, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0168
Number of Pages of Decision	19
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	John Hillock

DATE FILED: 6/2/2026

/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 PEORIA	)	☐ 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

BARB MCGRATH,

Petitioner,

vs.

NO: 21 WC 022211

FERVALUE USA, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total 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 further temporary total disability or of compensation for permanent disability, if any, pursuant to *Thomas vs. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

Regarding Issue J, medical services, the Commission views the evidence differently and strikes the Arbitrator's Findings and Conclusions of Law on page 13 of the Arbitrator's decision, and replaces it with the following.

The Commission finds the medical treatment at OSF Medical Group on July 16, 2021, was causally related to the accident. The Commission further finds the treatment provided on July 16, 2021, was reasonable and necessary as provided under §8(a) of the Act. On July 16, 2021, three days after the undisputed accident, Petitioner presented to her family medicine provider seeking treatment for injuries sustained in the accident as well as general health maintenance. The medical records documented a history of thyroid cancer and prior removal of the thyroid in 2014. Petitioner

requested a referral to an endocrinologist. Petitioner reported her work accident and complained of injuries to her jawline, chest, and left ankle. (PX3) Petitioner complained of right-sided jaw discomfort and she reported pain in the chest area and ankle with lumps and bruises. X-rays were ordered per Petitioner's request with no abnormalities found. On physical examination, a lump on the chest wall was noted. The left ankle exhibited mild discomfort with range of motion and some swelling was noted. The doctor prescribed anti-inflammatories and advised Petitioner to apply ice and heat, with instructions to call the office or seek medical attention if symptoms worsened or if new symptoms developed. Respondent disputed the relatedness of Petitioner's subsequent lumbar spine condition; however, the initial presenting injuries to the jaw, chest, and ankle were not contested. Accordingly, the Commission directs Respondent to pay Petitioner for the medical expenses incurred on July 16, 2021, as provided under §8(a) and §8.2 of the Act.

The Commission further modifies the Arbitrator's Order denying all medical expenses by striking the phrase "work activities that she performed for the respondent" and replaces it with "work accident," and further modifies the Order to award the medical expenses of OSF Medical Group for treatment rendered on July 16, 2021, as provided under §8(a) and §8.2 of the Act.

Regarding Issue K, prospective medical care, the Commission modifies the Arbitrator's Order by striking the phrase "work activities that she performed for the respondent" and replaces it with "work accident."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the reasonable and necessary medical expenses of OSF Medical Group for treatment rendered on July 16, 2021, as provided under §8(a) and §8.2 of the Act. Because the Petitioner failed to prove that the Petitioner's condition of ill-being is related to the work accident, all other medical benefits are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that because the Petitioner failed to prove that the Petitioner's condition of ill-being is related to the work accident, prospective medical treatment is denied.

All else is affirmed and adopted.

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

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

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 \$1,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 2, 2026

KAD/swj
O50526
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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	21WC022211
Case Name	Barb McGrath v. Fer/Value USA, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	John Hillock

DATE FILED: 5/19/2025

/s/ Kurt Carlson, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 13 2025 4.11%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Peoria)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)

Barb McGrath

Employee/Petitioner / bill@williamsandswee.com

v.

Fervalue USA, Inc.

Employer/Respondent / JHILLOCK@travelers.com

Case # **21** WC **022211**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **March 18th, 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, **6/21/2021**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$40,560.00**; the average weekly wage was **\$384.88**.

On the date of accident, Petitioner was **53** years of age, *single* with **0** dependent children.

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

ORDER***Medical Benefits***

Because the Petitioner failed to prove that the petitioner's condition of ill-being is related to the work activities that she performed for the respondent, medical benefits are denied.

Prospective Medical

Because the Petitioner failed to prove that the petitioner's condition of ill-being is related to the work activities that she performed for the respondent, prospective medical treatment is denied.

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

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

Kurt A. Carlson

Arbitrator

MAY 19 2025

Barb McGrath v. Fervalue USA Inc. 21 WC 022211
Attachment to Arbitration Decision

FINDINGS OF FACT

The issues in dispute are Petitioner's current condition of ill-being, medical services provided to the Petitioner, entitlement to medical bills, and whether Petitioner is entitled to prospective medical treatment. Arbitrators' Exhibit 1.

Petitioner's Testimony

Barbara McGrath testified that before 6/21/21 her back had never hurt her, then after her accident, she noticed changes in her body. (Tr. 8-9) She stated that she started working for Ferrero around 5/10/21 as a new hire and was working on a new production line for a candy bar. (Tr. 10) She testified that on 6/21/21, as she was walking through the factory, she had tripped on a metal pallet. "So, as we were walking, bam, trip, fall, face down, face first. Blood everywhere. They have an in-house nurse. So, of course, the supervisor and whoever else helped me up." (Tr. 12-13)

When asked when she started feeling pain in any part of her body, Petitioner testified, "Initially, like that second, I was just freaked out because of all the blood, and then you know you start feeling pain. So, the blood was everywhere. We went to the in-house nurse. I sat down. He looked at my lip." (Tr. 13) "Not only was my mouth affected; but right here, I had a line, a red like deep scratch line, a little bruising; but then as the day went on, hours later, that bruise became elongated; and then there was a lump, I had a lump right here on my chin area, bruising on my left inner leg and my ankle." (Tr. 15) Barbara McGrath then presented photos of her injuries to her lip, chest, left leg and left ankle that were taken on the date of injury. (PX 7)

Barbara McGrath was asked specifically by the Arbitrator, "Were you feeling that low back pain while you were still on the premises that day of the accident?" She responded, "I was in pain. So, that day of the accident, everything was in pain." (Tr. 23-24) Again, the Arbitrator specifically asked Ms. McGrath, "Yes, but when did you first feel the excruciating low back pain that radiated down your leg? That's very specific. When did that occur?" Petitioner responded, "Shortly after." (Tr. 24) When asked to be more specific than that by the Arbitrator, Petitioner testified, "probably within that week of the injury," (Tr. 24)

Petitioner testified that she treated with Dr. Hileman, her family doctor on 7/16/21. She told Dr. Hileman that she had pain and swelling in her left ankle, chest wall and jawline. (Tr. 25) Dr. Hileman set her up with x-rays of her ankle, jaw and ribs and told her to use an ice pack, heat and anti-inflammatory medications. (Tr. 25)

She testified that she first saw Dr. Michaels on 1/5/23, about a year and a half after her fall. (Tr. 27) When asked how her symptoms during that year and a half were, Ms. McGrath testified, "Bad." (Tr. 27) She testified that when she was at home, she rested as much as possible. Laying down was the best thing for her. "I couldn't even stand. The pain was that bad." (Tr. 27)

Ms. McGrath testified that during this time she was working for Rivian as a contractor on the third shift, working 8-hour shifts and walking 7-9 miles per shift. (Tr. 28) She stated that she had to give up this job due to the pain. (Tr. 28) She testified that she was using ice and heat all the time before she saw Dr. Michaels (Tr. 29) She received her first epidural steroid injection from Dr. Michaels on 1/5/23. (Tr. 30)

Petitioner testified that she followed up with Dr. Seibly on 1/30/23 and that Dr. Seibly found she had severe pain in her lower lumbar spine radiating to bilateral buttocks, difficulty walking, and leg weakness. (Tr. 33) She followed up with Dr. Seibly again on 7/10/23 and he recommended that she continue conservative treatment because she was not able to take time off for surgery. (Tr. 38) She also tried physical therapy in July of 2023. (Tr. 39) She stated that she was not able to complete a full course of therapy because she was working 12-hour shifts at Bridgestone. (Tr. 40) She testified that she would want the back surgery prescribed by Dr. Michaels. (Tr. 40) Ms. McGrath testified to her present-day job duties at Bridgestone and that her schedule consists of working 3 days a week with 12-hour shifts. (Tr. 41-42) She reported still using ice packs on her back. (Tr. 43).

On cross examination, Petitioner testified that she first reported her injury on 6/21/21, when she filled out an injury report with her supervisor, noted her injuries on the incident report and signed the report that day with her supervisor to certify the statements were true. (Tr. 44) She stated that her employment with Ferrero ended on 7/12/21, her sixtieth day of probation. (Tr. 44)

Petitioner confirmed that her first date of treatment following the injury was on 7/16/21 at OSF Fort Jesse where x-rays were completed to her left ankle, ribs and jaw. (Tr. 45) Her next date of treatment was on 10/7/21 at Normal college Convenient Care. She testified that she reported all of her complaints to the doctor on that day. (Tr. 45-46) She further testified that she treated with Normal College Convenient Care on 11/15/21 and 1/14/22, reporting “whatever my issue was that day.” (Tr. 46-47)

Petitioner agreed that the record stated that she was taking over 14,000 steps a day at Rivian during that time. Her job duties included cleaning all of the conference rooms, engineers and rows of cubicles. (Tr. 47) She agreed with the record that she was working 12-hour shifts in February 2022, and at this time she started working for Bridgestone. (Tr. 48) She testified to treating at Normal College Convenient Care on 7/22/22 and 7/30/22, reporting whatever her issues were on those days. (Tr. 48-49)

Petitioner testified that she first treated with Dr. Seibly on 11/12/22. (Tr. 49) She agreed that she treated with Normal College Convenient Care on 11/14/22 and the record stated that “her back pain escalated over the past 3 days.” (Tr. 50) She testified that she first treated with Dr. Michaels on 10/4/22, that Dr. Michaels examined her, asked her questions, and that she answered his questions truthfully that day. (Tr. 50-51). She further testified that she visited Dr. Salehi on 8/20/24. She testified that Dr. Salehi examined her and asked her questions, which she answered truthfully. (Tr. 52) Petitioner testified as to her job duties at Bridgestone. She stated that she is currently not working with any restrictions. (Tr. 53)

Medical Records

OSF Medical Group

On 7/16/21 Petitioner treated with Dr. Kimberli Hileman at OSF. She reported that she tripped on a metal frame and fell on her face at work 3 weeks ago. She sustained injuries to her jawline, chest and ankle. She used icepacks with benefit. She complained of right-sided jaw discomfort when she is not doing anything but denies any difficulty with eating or chewing. She complained of pain in the chest area and ankle along with bumps and bruises. the chest pain does not get worse with deep breathing. She requested x-rays of her jawline, chest and ankle. (PX3, pg. 3) “Her injuries all look mostly soft tissue swelling and hematoma, and definitely not suspicious of any bony issues. X-rays were ordered on patient’s insistence though I do not suspect any fractures and warned her of exposure to radiation. Despite trying to explain contusions to her and expectations of such along with inflammation and healing process she is insistent on getting x-rays.” (PX3, pg. 7) X-Rays of the mandible, bilateral ribs and left ankle were completed and were unremarkable. Petitioner made no mention of lower back pain at this visit.

On 10/13/21 Petitioner treated at OSF. She complained of leg pain, stating that she was walking a lot, about 7 to 9 miles, while doing her job. Last Monday around 5:15AM while at work she experienced excruciating above and into the back of the knee pain that was constant. She packed the knee with ice pack. She went to a prompt care and had an ultrasound on her leg to rule out a blood clot. Then, she was administered a Toradol injection with considerable relief of her pain. (PX3, pg. 10) On Monday while at work, she noticed the recurrence of constant knee pain again which slightly improved with sitting, but walking exacerbated the pain which does not radiate. She denies ant numbness or tingling. She has strained knee ligament. She had a previous fall injuring her mouth and lip and x-rays were performed, but did not have any sutures on it. It is not currently painful, but appears inflamed since then. (PX3, pg. 10) Petitioner made no mention of lower back pain at this visit.

On 11/3/21 Petitioner treated at OSF. She presented for tingling (toes) and numbness. She reported the numbness has started to get progressively worse. She reported that she was concerned she may be diabetic or wants to know why she may be having this neuropathy. (PX3, pg. 15) She was given instructions for peripheral neuropathy. (PX3, pg. 17) Petitioner made no mention of lower back pain at this visit.

On 11/12/21 Petitioner treated with Dr. Cipolla at OSF. She reported a new problem of foot pain. She reported the current episode started 1 to 4 weeks ago. She was seen by PCP and podiatrist and has ongoing toes pain. (PX3, pg. 21) She was diagnosed with bilateral toe pain. (PX3, pg. 22) Petitioner made no mention of lower back pain at this visit.

On 11/18/21 Petitioner treated at OSF. She was diagnosed with idiopathic neuropathy. (PX3, pg.23) Petitioner made no mention of lower back pain at this visit.

On 12/16/21 Petitioner treated at OSF. Petitioner went to Carle BroMenn on 12/5 with severe left hip pain. Unable to see x-ray. Was given ibuprofen and cyclobenzaprine. Patient reports symptoms

have resolved. (PX3, pg. 29) Was seen approximately 4 weeks ago after complaint of acute bilateral toe apathy became suddenly. Today she reports symptoms have greatly improved. (PX3, pg. 29)

On 4/26/22 Petitioner treated at OSF for a preoperative examination for robotic laparoscopic hysterectomy. (PX4, pg. 2) Petitioner made no mention of lower back pain at this visit.

On 5/18/22 Petitioner treated at OSF and presented for ER follow-up for dyspnea, groin pain and leg pain. She reported that since ER she continues to feel short of breath, 2 days ago developed severe leg pain and no groin pain. (PX4, pg. 12) Petitioner made no mention of lower back pain at this visit.

On 6/6/22 Petitioner treated at OSF. She denied any further abdominal or leg pain. Reported that cough is chronic for not acute or worsening. (PX4, pg. 21) Petitioner made no mention of lower back pain at this visit.

On 7/26/22 Petitioner treated at OSF. She reported three-day ER follow-up for acute midline low back pain. CT Lumbar spine as follows: congenital shortening of the pedicles and spondylosis resulting in multilevel up to moderate spinal canal and neural foraminal stenosis, most pronounced in the mid to lower lumbar spine as discussed above. Mild degenerative grade 1 anterolisthesis of L4 on L5 (PX4, pg. 36) She reported pain overall unchanged. Bilateral low back. Does not radiate into extremity, no weakness. Status post total hysterectomy on May 3rd for uterine/endometrial cancer. Pain 10/10. Petitioner was diagnosed with Degenerative Disc Disease at L5-S1 Level. (PX4, pg. 38) Petitioner made no mention of any workplace injury as the cause of her lower back pain.

On 9/22/22 Petitioner treated at OSF. Petitioner requested to be taken off of work due to back pain. Asked for 2 weeks so she can complete the following. Had neurosurgery evaluation. Not a surgical candidate at this time. Has appointment with pain management to be evaluated for injections. She has an appointment to start PT as well. She works 3rd shift at Rivian; walks 7-9 miles per shift. She works on the line. (PX4, pg. 57) Petitioner made no mention of any workplace injury as the cause of her lower back pain.

Normal College Convenient Care

Petitioner treated with Normal College Convenient Care on 10/7/21 for complaints of left leg pain. She states since Monday she has been having pain on the posterior medial portion of her left leg. Denies any known injury or trauma. Patient does not that she is overweight and does not exercise, but this is not normal pain for her. She states with her job she is always moving and has never had issues. Denies any numbness or tingling in the area, or pain that radiates. (RX8, pgs. 54-55) Petitioner made no mention of lower back pain at this visit.

On 11/15/21 Petitioner treated at Normal College Convenient Care for left posterior knee pain. She had similar symptoms a month ago. She had an ultrasound at the time which is negative for DVT and negative for Baker's Cyst. She was then given a Toradol injection which helped significantly until yesterday. Her pain has returned. She works night shift at ADM. She is on her feet a lot. Left Knee X-rays including AP, lateral and sunrise views were obtained and revealed mild degenerative

changes especially along the lateral aspect. (RX8, pgs. 51-53) Petitioner made no mention of lower back pain at this visit.

On 1/14/22 Petitioner treated at Normal College Convenient Care. She reported pain in her right knee and behind her right knee that started this a.m. Patient had similar symptoms with her left knee approximately one month ago. Patient stated that she does over 14,000 steps a day at her place of work and feels this just knee strain as she is overweight but has lost almost 20 pounds due to walking. (RX8, pg. 47) Petitioner made no mention of lower back pain at this visit.

On 7/22/22 Petitioner treated at Normal College Convenient Care. She stated that she recently had a hysterectomy and had been off of work. She notes that she has had lower back pain which she stated, “it kills me”, described as burning, sharp, rated as 12 to 13/10. Aggravated with walking and moving, alleviated with an ice pack. Occasionally radiates to the right anterior groin region. Patient noted that she walked 7-9 miles at work. Has no trouble ambulating but does experience pain. (RX8, pg. 40) On physical examination, it was noted that there was no tenderness to palpation of lower back. (RX8, pg. 42) Petitioner was diagnosed with chronic midline low back pain without sciatica. An x-ray of the lumbar spine was completed that showed no bony abnormalities and Petitioner requested a Toradol shot. (RX8, pg. 43) “The radiology reading of the x-ray did not show fracture or dislocation. There was mild degenerative changes noted, which means wear and tear.” (RX8, pg. 37) Petitioner made no mention of any workplace injury as the cause of her lower back pain.

On 9/14/22 Petitioner treated at Normal College Convenient Care for chronic back pain that had escalated over the last 3 days. She noted the pain was worse with standing and better when walking. She had seen neurosurgeon, PCP and has a referral for pain management. Has no saddle anesthesia, or numbness or tingling, mild radiation of pain to the buttocks. (RX8, pg. 24) Petitioner made no mention of any workplace injury as the cause of her lower back pain.

Carle McLean County Orthopedics – (Dr. Michaels)

On 10/4/22 Petitioner treated with Dr. Michaels presenting for evaluation and management of low back pain. She was referred by Dr. Seibly to discuss interventional pain strategies. “The pain has been present for the past several years but worsening over the last twelve months. The patient does not recall an inciting event.” (RX7, pg. 55)

On 10/5/22 Petitioner attended Physical Therapy. She stated that she was experiencing the worst pain of her life and that the pain was through the roof. She stated that a little over a year ago she fell when tripping over a metal thing. She stated she walks 7-9 miles everyday on her shift. She stated that her pain at best was 8/10. (RX7, Pg. 44)

On 10/13/22 Petitioner obtained a lumbar epidural steroid injection at L5-S1. (RX5, pg. 41)

On 11/7/22 Petitioner followed up with Dr. Michaels. She noted an 80% improvement in her discomfort following the L5-S1 ILES. She wished to proceed with a repeat injection and was instructed to regularly perform her home exercise program. (RX5, pg. 25)

On 11/15/22 Petitioner obtained a lumbar epidural steroid injection at L5-S1. (RX5, pg. 21)

On 12/8/22 Petitioner followed up with Dr. Michaels. Petitioner reported 70% improvement in her discomfort following ILES. Her remaining pain is localized to her left lumbosacral spine. It does not travel lower into her leg. (RX5, pg. 18)

On 1/5/23 Petitioner obtained a left L4/5 transforaminal epidural steroid injection. (RX5, pg. 14)

On 8/1/23 Petitioner followed up with Dr. Michaels. Since last visit, she was evaluated by Dr. Seibly who offered surgical intervention. The patient is unable to take time off work to have surgery completed, so she is here to discuss injections. She wished to proceed with a repeat L4/5 TFESI. (RX5, pg. 10)

On 8/31/23 Petitioner obtained a left L4/5 transforaminal epidural steroid injection. (RX5, pg. 6)

On 11/28/23 Petitioner followed up with Dr. Michaels. She was unsure if the last injection was helpful because a few days after the injection she noted new right-sided low back and abdominal pain. Examination was notable for normal strength and sensation in her lower extremities. Lumbar ROM was full. She was interested in another injection, but Dr. Michaels stated that the risks outweighed the benefits given recent episode of shingles and infection. She planned to proceed with sometime next year with Dr. Seibly. (RX5, pg. 2)

Carle BroMenn Neurosurgery (Dr. Seibly)

On 9/12/2022 Petitioner treated with Dr. Seibly. She complained of low back pain with radiation into the legs, particularly the posterior left buttock region. She reported the pain is worse with prolonged standing and walking. Sitting is fairly comfortable. She has not had formal treatment for her symptoms as of yet. (RX5, pg. 29) Petitioner stated that she had a fall at work. (RX5, pg. 31) It is noted that Petitioner has a 52.46 BMI. Dr. Seibly noted petitioner's CT scan and subsequent MRI showed L5-S1 spinal stenosis with spondylolisthesis. There is L5-S1 degenerative disc disease with left sided lateral recess stenosis. There is also degenerative changes to the SI joints. Dr. Seibly opined that Petitioner's symptoms were likely due from the stenosis and spondylolisthesis of L4-5. He did not recommend surgery at this time, recommending nonsurgical treatment since she had no neurological deficits. (RX5, pg. 31-32)

Petitioner followed up with Dr. Seibly on 11/7/22. After her last visit she was having leg pain, weakness and difficulty ambulating. She noted that her symptoms began after a fall while she was working at Ferrero Chocolate Factory. (RX5, Pg. 22) She stated that she found a new job at Bridgestone/Firestone and is tolerating this well. She denies any pain at this time and is doing well. She has no neurological deficits on exam. She has full strength, sensation and reflexes. (RX5, pg.22)

On 1/30/23 Petitioner followed up with Dr. Seibly. She reported that her symptoms returned. She continued to have severe pain in the lower lumbar spine that radiates down the bilateral buttocks. She described classic neurogenic claudication and had difficulty even walking short distances. As noted before, petitioner reported that her symptoms began after a fall in summer of 2021 while she was working at Ferrero chocolate factory. She really had no symptoms prior to this episode. (RX5, pg. 14) She has mild to moderate stenosis at L3-4 and significant stenosis at L4-5. I discussed the procedure of a lumbar laminectomy with her today. She cannot afford to take time off of work.

Therefore, she would like to hold off on the laminectomy as long as possible. When her schedule allows, she can contact me to coordinate the L3-4-5 laminectomy. (RX5, pg. 14)

On 7/10/23 Petitioner followed up with Dr. Seibly. Petitioner noted that she was continuing to experience lower back pain that radiates down her buttocks to her posterior left leg with occasional radiation to her groin. She described the pain as aching with intermittent cramping in her lower legs. She was recently seen by Dr. Michaels with pain management and underwent ESI that has improved her leg pain. She recently started a new job, therefore not able to take time off for surgical intervention, we are recommending continued conservative management until she may proceed with surgery. (RX5, pg. 4) Per Dr. Seibly, "Fortunately she does not have any neurological deficits, and surgery is elective." (RX5, pg. 6)

Testimony of Dr. Seibly

Dr. Seibly testified at the request of Petitioner on May 21, 2024 (PX1). Dr. Jason Seibly is a neurosurgeon, and the majority of his practice is focused on the spine. (PX1, pg.7) Dr. Seibly first saw Barb McGrath on 9/12/2022. She had a chief complaint of low back pain with radiation into her legs. Particularly she has radicular pain into the left buttock area. She has symptoms suggestive of lumbar spinal stenosis. (PX1, pg. 8) At the time he performed a physical examination, which was essentially unremarkable with no obvious neurological deficits. He reviewed her MRI of the lumbar spine which showed a Grade 1 spondylolisthesis of L4-5 and severe spinal stenosis which he felt correlated and explained her symptoms. (PX1, pg. 8)

Dr. Seibly testified, "She gave me quite an elaborate history about a fall that occurred while at work that I think was summer of 2021, she did not give me an exact date, where she basically tripped and fell and that's how she hurt her back." (PX1, pg. 9) Dr. Seibly stated that he referred to petitioner for pain management with Dr. Michaels (PX1, pg. 10) Dr. Seibly did review Dr. Michaels' medical records. (PX1, pg. 11) When specifically asking about the physical therapy note from 10/5/22, Dr. Seibly testified that she actually took a better history than he did, and that the Petitioner stated a little over a year ago she tripped over a metal thing and injured herself. (PX1, pg. 13)

He further testified that in November of 2022 petitioner was actually doing well. She was still having leg pain, difficulty walking, but the injection had helped. "She had found a new job, and she was working full time, and it was pretty physical too. She was at a manufacturing line at one of the time companies here in town." (PX1, pg. 14)

On 1/30/23 Petitioner provided him a history that she reiterated that her symptoms began after a fall in the summer of 2021 while she was working at Ferrero Chocolate Factory. She stated that she had no symptoms prior to that episode. Prior to then she was active and energetic, and then she said that she did not have any back or leg pain before that incident. (PX1, pg. 16) He further testified that when he saw her in January of 2023 the injections and therapy had lost their efficacy and at this time, he talked to her about surgery. (PX1, pg. 16) Dr. Seibly testified that it is his opinion that the Petitioner's condition of back pain was either caused or made symptomatic or aggravated by the fall that she describes. (PX1, pg. 19) He further opined that her age and weight do not change his opinion in any way. (PX1, pg. 20)

On cross examination, Dr. Seibly testified, “prior to the visit with me in September of 2022, I do not believe that she had any other treatment for her back and leg pain.” (PX1, pg. 20) The Petitioner never mentioned any prior treatment for her back to Dr. Seibly and he was not aware of any prior treatment for her back. Dr. Seibly testified that he did not know the specific injury date and that he did not know when she had obtained any initial treatment. (PX1, pg. 21) He further testified that upon reviewing his records, he did see that she treated with PromptCare on July 16th and that to the best of his knowledge that was the first time she had sought medical attention for injuries related to the fall. He acknowledged that she did not note any back pain during her initial visit, but treated for rib pain, jaw pain and ankle pain. (PX1, pg. 21)

Dr. Seibly further testified that he believed that the Petitioner was working for Ferrero at the time that she was treating with him. (PX1, pg. 25) He was no aware when the Petitioner had stopped working for Ferrero.

Dr. Seibly testified that he was able to review Dr. Michaels’ notes from his first visit with the Petitioner on 10/4/2022. He testified that he was able to review Dr. Michaels’ note which stated, “the pain has been present for the past several years with worsening over the last twelve months, the patient does not recall an inciting event.” (PX1, pg. 26) He testified that Petitioner did not have any neurological deficits when he examined her on 11/7/22. (PX1, Pg. 27) Dr. Seibly further testified that Petitioner’s surgery was elective and could be scheduled at the patient’s convenience. (PX1, pg. 29)

Chicago Neurospine Surgery - Dr. Sean Salehi

On 8/20/24 Petitioner presented for an IME before Dr. Sean Salehi at Chicago Neurospine Surgery for her lumbar spine. (RX2) Barb McGrath reported an injury at work on 6/21/21. She reported that she had just been hired by Ferrero and had not started anything hands on yet as they were starting a new line. She was being shown around the plant and while walking she tripped over a metal frame and fell face first hitting the metal. She had a bleeding cut on her mouth. When she got home, she noticed a lump on her chest with bruising, left knee and ankle abrasions and bruising. She reported that when standing up at home right afterwards she felt pain in the left lower back and buttock. (RX2, pg. 1) Petitioner informed Dr. Salehi that she was terminated after 60 days of her employment. She further stated to Dr. Salehi that within a few weeks from the injury the left lower back and buttock pain going into the left leg became excruciating going up to a 10/10. (RX2, pg. 1) She stated that her pain was a constant 8/10 but intermittently radiates up to a 10/10. She is currently working 12-hour days. (RX2, pg. 2)

Dr. Salehi listed all of the medical records he reviewed from Petitioner’s first date of treatment on 7/16/22. (RX2, pgs. 2-5) It was noted that Petitioner weighed 345 pounds with a BMI of 52.5. Dr. Salehi opined that Petitioner’s diagnosis was lumbar spondylolisthesis and lumbar spondylosis. He could not say with a reasonable neurosurgical certainty that her current condition regarding the lumbar complaints is related to the 6/21/21 work injury given the following facts: 1. There are no medical records mentioning low back pain until one year after her stated injury, 2. The pain management note of 10/4/22 mentions chronic history of lower back pain for many years contrary to her stated history in today’s evaluation of not having had any prior low back pain predating the June 2021 accident, 3. Her statement in the history today that she had immediate lower back pain

after the accident but yet no work-up or x-rays of spine were done as part of the initial work up contrary to the other body parts she was complaining about the time which were in fact imaged. (RX2, pg. 7) Dr. Salehi further opined that the treatment to date and recommended surgery were medically reasonable however not related to the work injury of 6/21/21. He did not believe the term MMI applies to the lumbar spine as I do not believe she sustained an injury to the lumbar spine on 6/21/21. Dr. Salehi testified that any work restrictions that Petitioner has would not be related to any work injury but rather her pre-existing condition. (RX2, pg. 9)

Testimony of IME Dr. Salehi

Dr. Salehi testified on December 3rd, 2024, via deposition. (RX 4) Dr. Salehi is a board-certified neurological surgeon who performs roughly 150-160 surgeries per year involving the lumbar spine, including microdiscectomies, laminectomies, cervical and lumbar fusions and disc replacements. (RX\$, pg. 6) Dr. Salehi examined the Petitioner and generated a report in conjunction with his examination. Petitioner provided Dr. Salehi with a history of her accident. (RX4, pgs. 8-11)

Dr. Salehi testified that Petitioner's elevated BMI increased the risk of spinal conditions, whether it is pain, disk herniations or anything which has a degenerative nature to it. (RX4, pg. 12) He testified to the results of his physical examination of the patient. (RX4, pg. 12-13) He also testified as to the medical records, diagnostic reports & films that he reviewed.

Dr. Salehi testified that Petitioner's initial date of treatment was 7/16/21, where she received treatment for her left ankle, bilateral ribs, jaw, chest & left knee. There was no mention of back pain. (RX4, pg. 14) Dr. Salehi further testified that the Petitioner treated on 10/7/21, 11/15/21, 1/14/22, and 2/22/22 without any mention of back pain. Petitioner's first mention of back pain in the medical records is in July of 2022 and there is no mention of any incident at Ferrero. (RX4, pg. 15) Petitioner's first neurosurgery consult was on 9/12/22, more than a year after the date of injury. (RX4, pg. 16)

Dr. Salehi opined that Petitioner had no injury as it related to the date of accident to her spine. His basis for that diagnosis was that based on his review of the records, the condition of her spine was not related to the accident. The foundation for that opinion was the lack of casual connection. She mentioned that she had back pain and leg pain immediately after the accident, yet the initial workup did not include anything that would relate to the back. The first note that talks about any back pain was about a year later. Then, there was a pain management note from 10/4/22 in which the doctor mentions chronic history of lower back pain for many years along with leg pain. (RX4, pgs. 16-17) He could not correlate the need for Petitioner's treatments to any work injury as there was not any obvious logical pattern to her pain chronology after the fall based on the review of the records and lack of consistency from what she had told him. (RX4, pg.18)

Dr. Salehi opined that Petitioner would not be a good candidate for a fusion because of her elevated body mass index leaning into potentially significant complications. (RX4, pg. 19) He further opined that he did not feel that the Petitioner ever injured her back on 6/21/21 as he did not see a direct causal connection to the injury to her symptoms in the lower back in a reasonable chronologic fashion. (RX4, pg. 20)

On Cross Examination, Dr. Salehi confirmed that because of the chronology in the medical records, he didn't consider there to be a causal connection between the fall and what Petitioner was experiencing when he saw her. (RX4, pg. 21) Dr. Salehi was asked in the abstract if it was possible that for someone of her BMI with her back condition a fall could aggravate a condition in her back, to which Dr. Salehi confirmed it was possible. He confirmed that if the medical records had indicated an earlier report of back pain, his opinion would have been subject to change. (RX4, pg. 23)

When asked to confirm why he could not find a causal connection, Dr. Salehi confirmed that there is no mention of back pain for one year in the medical records. He also commented on the pain management note that the patient had chronic history of lower back pain for many years. This was contrary to what she told him when he first asked her if she had any prior history of back pain and leg pain and she had denied it. (RX4, pg. 27)

On Re-Direct, Dr. Salehi commented that Petitioner's attorney's questions had hypothetical assumptions and that the cross-examination did not have any impact on the opinions that he had rendered. (RX4, pg. 28)

ISSUES and CONCLUSIONS

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Worker's Compensation Claimant bears the burden of showing by a preponderance of the evidence that his current condition of ill-being is causally related to the work injury. Horath v. Indus. Comm'n, 96 Ill. 2d 349, 357-358, 449 N.E.2d 1345, 1348-1349. (1983).

There is no casual connection between Petitioner's back pain complaints and the 6/21/21 work injury. It is clear from the date of accident that the Petitioner did not injury her back when she tripped over a pallet. Ms. McGrath filled out an Employee Incident Report with her supervisor on 6/21/21, indicated that she hit her lip on the way down to the floor, causing her lip to bleed. She noted that she was wearing new prescription glasses that she was still getting used to and had her face mask on, which obstructed her vision. (RX1) Petitioner testified at trial that she noted her injuries on the incident report that day and signed the report to certify that her statements were true. (Tr. 44) There is no mention of back pain in the Employee Incident Report.

Petitioner's first date of treatment is on 7/16/21, where she obtained x-rays to her left ankle, bilateral ribs and jaw. Ms. McGrath testified that she told the doctor everything that was bothering her that day. (Tr. 44-45) There is no mention of back pain here, either. Petitioner was not shy about seeking medical treatment and went to multiple treaters for various issues and pain symptoms from 10/7/21 through July of 2022. She never reported back pain to any of these treaters or at any of these visits. Additionally, Petitioner testified that she was working full duty at Rivian throughout this time, walking 7-9 miles per day and working 12-hour shifts. (Tr. 47-48)

Petitioner's first reports of low back pain with radiation to the legs was at a visit with Dr. Seibly on 9/12/22. (RX5, pg. 31) This is also the first time since 7/16/21 that the Petitioner mentions her fall at work. Dr. Seibly confirms in his testimony that Petitioner had not mentioned any back pain prior to visiting him and that she did not report any back pain when she initially sought treatment for her injuries.

It is the duty of the Arbitrator to weigh the credibility of the witnesses. The Arbitrator carefully reviewed the credibility of the Petitioner and found these inconsistencies: When asked directly by the Arbitrator at trial when she first started feeling the excruciating low back pain that radiated down her leg, the Petitioner testified, "Probably within that week of injury." (Tr. 24) This is contrary to all of the evidence in the record that confirms her first mention of back pain is over a year after the accident. Additionally, in her 10/4/22 initial visit note with Dr. Michaels, it was noted that Petitioner's pain has been present for the past several years but worsening over the last 12 months. "The patient does not recall an inciting event." (RX7, pg.55) At trial Petitioner testified that she was examined by Dr. Michaels, was asked questions and answered all of Dr. Michaels' questions truthfully. (Tr. 51) Throughout the medical records and her testimony, Petitioner regularly stated that she was walking 7-9 miles a day at work. This is inconsistent with her complaints of 10/10 and above back pain. Dr. Salehi credibly testified that there was no casual connection to the accident and confirmed that there is no mention of back pain for one year in the medical records. In totality, there are too many inconsistencies by the Petitioner for the Arbitrator to find her credible. Petitioner did not meet her burden of proof that her current condition of ill-being is causally related to the work injury.

Given the preponderance of the evidence, the Arbitrator finds that Petitioner did not meet her burden of proof to show that her current condition is related to the work injury of June 21, 2021. The Arbitrator finds that Petitioner suffered resolved lip, chest, left knee and left ankle contusions on June 21, 2021, which requires no additional treatment.

In support of the Arbitrator's decision with respect to (J) Medical Services, the Arbitrator finds as follows:

For the reasons set forth above, the Arbitrator finds that the Petitioner is responsible for all treatment incurred beyond the 7/16/21 treatment date with OSF Fort Jesse. The Arbitrator finds that the Respondent shall pay the reasonable, necessary, and related medical bills up to the date of 7/16/21.

Based on the above, the Arbitrator finds that the petitioner failed to prove that any of the medical services provided to Petitioner beyond the initial treatment date of 7/16/21 were not reasonable, necessary, or related to the alleged accident dated June 21, 2021.

In support of the Arbitrator's decision relating to prospective medical, the Arbitrator finds the following:

For the reasons set forth above, the Arbitrator has found that Petitioner did not meet her burden of proof to show that her current condition is related to the work injury of June 21, 2021. The

Arbitrator finds that the petitioner has failed to prove that she is entitled to any prospective medical benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021179
Case Name	Troy Dishner v. Southern FS
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0169
Number of Pages of Decision	16
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Amber Cameron

DATE FILED: 6/2/2026

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Troy Dishner,

Petitioner,

vs.

No. 23 WC 21179

Southern FS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, corrects 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.

As a preliminary matter, the Commission notes that on review of the permanency award we give significant weight to factor (v) (evidence of disability corroborated by the treating medical records). The Commission affirms the permanency award, noting a clerical error in the last sentence of the "Disability" paragraph of the Arbitrator's Decision. The Commission corrects that sentence to state: "The arbitrator awards 3% loss of use of the whole person pursuant to Section 8(d)2 of the Act for the coccyx tailbone contusion Petitioner sustained on May 23, 2022."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 26, 2025, is hereby corrected, 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.

No bond is required for removal of this cause to the Circuit Court by Petitioner. Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$9,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 2, 2026

SJM/sk

o-5/5/2026

44

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021179
Case Name	Troy Dishner v. Southern FS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Amber Cameron

DATE FILED: 8/26/2025

/s/Bradley Gillespie, Arbitrator

Signature**INTEREST RATE WEEK OF AUGUST 26, 2025 3.92%**

STATE OF ILLINOIS)
)SS.
 COUNTY OF JEFFERSON)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Troy Dishner

Employee/Petitioner

v.

Southern FS

Employer/Respondent

Case # **23** WC **021179**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **June 12, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 23, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$51,118.08**; the average weekly wage was **\$983.04**.

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

ORDER

Petitioner has failed to prove his current condition of ill-being is related to the May 23, 2022, accident and his claim for benefits, including medical treatment, medical bills, and temporary total disability benefits after MMI on May 31, 2022, is denied.

Petitioner has met his burden regarding causal connection for the coccyx / tailbone contusion and is entitled to permanency for those condition(s). the arbitrator finds Petitioner is at MMI for his work related condition as of May 31, 2022. The arbitrator finds Petitioner sustained permanent partial disability to the extent of 3% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. Respondent shall pay Petitioner PPD benefits of \$589.82/week for 15 weeks, because of the injuries sustained.

Respondent shall pay any reasonable and necessary medical benefits, as contained in Petitioner's Exhibit 1, pursuant to the fee schedule, for treatment for the period May 25, 2022, through May 31, 2022, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$655.36/week for 4/7 week, commencing May 25, 2022, through May 31, 2022, less statutory waiting period, as provided in Section 8(b) of the Act.

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

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

Bradley D. Gillespie

Signature of Arbitrator

AUGUST 26, 2025

ICArbDec p.

Petitioner testified that he left his employment with Respondent in late June 2022 and went to work for Dyno Nobel in their distribution warehouse. (Tr. pp. 12, 19) Petitioner testified he changed employers after a friend told him about the warehouse position with Dyno Nobel and advised it was a much less physically demanding job than his current position with Respondent with great benefits. (Tr. pp. 12, 19) He confirmed he resigned his position with Southern FS approximately June 17, 2022, and started with Dyno Noble approximately June 23, 2022. (Tr. p. 39) His duties at his current position with Dyno Noble include loading boxes of materials on pallets, wrapping them and putting them on trailers. (Tr. p. 12)

Petitioner continued to work full duty without seeking any medical care for the May 22, 2022, fall on his tailbone for approximately 14 months - between May 31, 2022, and July 7, 2023. During that time, he continued working his full duty position with Respondent and then, with his new employer, Dyno Noble. (Tr. p. 21). During that 14-month period, he did not seek any care for his back or obtain any pain medications or other treatment for relief of his pain. (Tr. p. 40) Petitioner testified that in 2023, his wife was undergoing chemotherapy for breast cancer, and he put off his own medical care to take care of her. (Tr. p. 22) Petitioner advised that his back symptoms increased over time and new symptoms of weakness in his left leg and foot developed in late 2022 into 2023. (Tr. p. 27) He testified the back symptoms were associated with certain activities such as mowing the lawn, sneezing/coughing, standing in a john boat fishing, and other standing activities. (Tr. pp. 22-23, 30) Petitioner testified that he had not had any new accidents or injuries between May 2022 and July 7, 2023. (Tr. p. 23) He claimed that his symptoms never completely went away. *Id.*

By July 2023, the pain in his back was so severe that he had to seek care with his primary care provider, Dr. Ford, and he was sent for an MRI and pain management. (Tr. pp. 22-24) However, based on the MRI findings, the pain management physician, Dr. Roberts did not believe a steroid injection would help and he recommended a referral to a surgeon. (Tr. pp. 22, 24, 26). Petitioner testified that he saw Dr. Kevin Vaught on July 21, 2023, who recommended surgery. (Tr. pp. 26-27) Petitioner sought a second opinion with Dr. Rutz regarding the recommendation for surgery. (Tr. p. 28) Dr. Rutz recommended a single level disc replacement at L5-S1. (Tr. pp. 28-29) Dr. Rutz performed surgery on September 28, 2023, and he was off work for a period and then progressed to light duty, then full duty release from care at MMI as of January 23, 2024. (Tr. p. 29) After surgery and release at MMI, Petitioner testified he was able to return to his full duty position with Dyno Noble and had no difficulty performing his job and only experiences occasional soreness or pain that he manages with over-the-counter pain relievers. (Tr. pp. 29 - 34) He has not sought any additional care for his low back since being released by Dr. Rutz at MMI in January 2024. (Tr. p. 40)

Petitioner testified that when he was off work related to the L5-S1 disc replacement surgery recovery, he was working for Dyno Noble and filed for FMLA leave and received short term disability benefits through his employer until his return to work on November 23, 2023. (Tr. pp. 41- 43).

MEDICAL EVIDENCE

Petitioner's medical records were entered into evidence at arbitration as Petitioner's Exhibits 3-10. The first medical appointment after the accident occurred on May 25, 2022, at Harrisburg Medical Center. (PX 3 p. 11) At that time, Petitioner gave a history of a fall on a metal divider at work the prior day trying to break fertilizer free from a truck hopper. *Id.* It was noted he fell on his left butt cheek and tailbone. He continued working that day with increasing pain through the day. *Id.* At the time of the initial medical visit, his complaints were limited to pain at the sacrum/tailbone where he fell on the metal bar. X-rays of the sacrum/coccyx were obtained and confirmed no acute fracture or dislocation and evidence of mild degenerative changes in the lumbar spine. (PX 3 p. 10) Petitioner was taken off work from May 25, 2022, through May 30, 2022, a total of four workdays. (PX 3 p. 15)

Petitioner returned to work on May 31, 2022, and continued working full duty through his resignation from Respondent Southern FS on June 17, 2022, to work for Dyno Noble. (RX 2, Tr. p. 39) Petitioner continued to work full duty for Dyno Noble, including participating in overtime, through July 6, 2023. (RX 2, pp. 14-18) Petitioner did not seek any medical care, make any calls to his primary care regarding any tailbone/low back pain complaints, or request any pain medications for back/tailbone pain during the 14-month period between his single visit at Harrisburg Medical Center on May 25, 2022, and his return to the same facility on July 7, 2023, for new complaints of pain down his left leg. (PX 3, PX 4). Petitioner did present to his primary physician on June 18, 2022, at which time his complaints were limited

to the neck and shoulder, which he testified was related to an old injury and unrelated to this fall. (PX 4 p. 2, Tr. pp. 17-18) He testified that he did not believe that his neck and shoulder pains may have been masking complaints to his back/tailbone, he only had complaints to his neck/shoulder at that visit. (PX 4 p. 2, Tr. pp. 17-18) Petitioner also went to Harrisburg Medical Center for lab work on September 26, 2022, and presented to his treating nurse practitioner on October 7, 2022, for lab follow-up. (PX 3 p. 3). At the October 7, 2022, visit, there was no complaints about any back pain, but they did discuss other issues such as fatigue and low testosterone. *Id.*

When Petitioner returned to Dr. Clayton at Harrisburg Medical Center on July 7, 2023, a little over a year since his last visit with his primary care, the reason for the visit was noted to be new pain that started 2-3 months prior (approx. March 2023) radiating from the top of his left buttock down his left leg. (PX 4 p. 10) He denied any fall or trauma and noted that he had recently tried chiropractic treatment for the past two months for these new complaints without relief. *Id.* Despite effort by Petitioner and Respondent counsel, no chiropractic records were able to be located, and no chiropractic records are included in evidence. In the July 7, 2023, note, Dr. Clayton noted decreased sensation along the L5-S1 dermatome, including down into the left lateral foot consistent with his three-month history of radiating pain. (PX 4 p. 13) Dr. Clayton diagnosed left sided sciatica, lumbar disc herniation with radiculopathy and noted his exam was consistent with L5-S1 radiculopathy and an MRI was ordered. *Id.* At no point in the July 7, 2023, visit note was there mention of the May 2022 work fall on the tailbone or pain complaints prior to approximately March 2023. *Id.*

An MRI was ordered by Dr. Clayton as well as a Medrol dose pack, and he advised Petitioner if his complaints worsened in the meantime, he should go to the emergency room. (PX 4 p. 13) Petitioner presented to Barnes Jewish ER on July 10, 2023, complaining of lower back pain over the past couple of months and increase in radiation down the left leg, worse in the past week and new symptom of incontinence. (PX 6 p. 7). This is the first mention of Petitioner's May 23, 2025, accident or intermittent low back pain. *Id.* This same history was noted by the orthopedic consult at Barnes Jewish ER, Dr. Edward Barksdale – pain and numbness down left leg the last few months, worsening over the past two weeks. (PX 6 p. 39) An MRI of the lumbar spine was obtained at Barnes Jewish on July 10, 2023, that confirmed small disc bulges and spinal stenosis at L3-4, L4-5, and L5-S1 resulting in only mild canal stenosis at L3-4 and severe left neuroforaminal stenosis at L5-S1. (PX 6 pp. 58-59). Petitioner was discharged from the ER the same day and advised to return to his primary care for further workup. He was given a short course of Toradol for pain control and advised to return to his primary care for further workup. (PX 6 p. 93) Petitioner returned to Dr. Clayton two days later, on July 12, 2023. (PX 4 p. 21)

On July 12, 2023, Dr. Clayton noted that Washington University confirmed Petitioner's neuroforaminal narrowing at L5-S1 was not a neurosurgical emergency. (PX 4 p. 25) Dr. Clayton noted that Petitioner had gotten no relief from systemic steroids, received minimal relief from Toradol and tizanidine in the ER, and had a follow-up schedule with a Washington University spine surgeon in October. *Id.* Dr. Clayton recommended an epidural injection with Dr. Roberts at Deaconess Pain Management. *Id.* Petitioner presented to Dr. Roberts on July 18, 2023. (PX 7). Petitioner reported a history of falling on his coccyx a year ago but that his pain improved with pain medication and muscle relaxers, but he experienced a recurrence of his lumbar pain over the last two months which had increased in intensity over the last two weeks. (PX 7 p. 2) Dr. Roberts noted no Achilles relex, a positive straight leg raise on the left, diminished range of motion in flexion and extension with pain. (PX 7 p. 8) Dr. Roberts did not administer an injection, but instead gave Petitioner a prescription for gabapentin and released him to follow up with the already scheduled neurosurgeon visit. *Id.*

Petitioner presented to Dr. Kevin Vaught, at Regional Brain and Spine Center, on July 21, 2023, for neurosurgical evaluation. (PX 5 p. 7) The history provided to Dr. Vaught included the work accident in May 2022 with Petitioner reporting he had immediate localized pain at the coccygeal region without any other

pain other than some localized pain at the hip after the work fall in May 2022. (PX 5 p. 8) Petitioner reported that he continued to work full duty, and over the past three months before the July 21, 2023, visit, he developed severe left lower back pain and left leg burning, weakness, tingling, and numbness that radiates in a left S1 distribution. *Id.* Petitioner was noted to be in obvious pain and Dr. Vaught noted that the MRI findings at L5-S1 correlate with his current symptoms and recommended consultation with pain management for a possible L5-S1 transforaminal epidural steroid injection. (PX 5 p. 9) Dr. Vaught completed short term disability forms for Petitioner at the July 21, 2023, visit. *Id.* Instead of proceeding with the treatment recommendations of Dr. Vaught, Petitioner sought a second opinion with Dr. Kevin Rutz of Orthopedic Specialists in St. Louis, MO.

Petitioner initially presented to Dr. Rutz for a second opinion surgical evaluation on August 15, 2023. (PX 8 p. 2) Dr. Rutz recorded a history of Petitioner falling on his tailbone on May 23, 2022, at work with immediate pain in the tailbone and lower back. *Id.* On August 15, 2023, Dr. Rutz noted a four-month history of increased severity of pain radiating into the left buttock and posterolateral leg with numbness, tingling and burning sensation in the left foot. *Id.* Dr. Rutz diagnosed L5-S1 discogenic back pain and left leg radiculopathy. (PX 8 p. 4) Dr. Rutz noted that “with the information provided” of continued pain since the work accident in May 2022, and with progression of his pathology with development of left leg radiculopathy, it appeared the back pain was secondary to the May 2022 work incident. *Id.* Due to Petitioner’s worsening back and radicular pain down his left leg, Dr. Rutz recommended an L5-S1 disc arthroplasty and decompression. *Id.* After medical clearance, Dr. Rutz performed an anterior lumbar disc replacement at L5-S1 on September 28, 2023. (PX 8 pp. 6-7; PX 10) At the six-week postop follow-up, Petitioner was released to return to work light duty as of November 20, 2023. (PX 8 p. 15) At follow up on December 19, 2023, he was off all pain medications, was doing well overall, and was ready to return to full duty work without restrictions. (Px8). Four months post-op, Petitioner returned to Dr. Rutz on January 23, 2024, and was released at maximum medical improvement. At that time, he was working full duty, had no significant discomfort and was overall doing very well. (PX 8 p. 18) Petitioner did not seek any additional care or treatment related to the low back after January 23, 2024, and testified he continues to work full duty at his regular position as of trial.

Petitioner did not file a Claim for Compensation for the May 23, 2022, fall at work until approximately August 16, 2023, 15 months after the work accident and after he had already had a consultation with Dr. Vaught. Petitioner proceeded with surgery in September 2023 under his group health. After the visit with Dr. Clayton on July 7, 2023, Petitioner was taken off work and remained off work through his release to return to work by Dr. Rutz on November 30, 2023. (PX 4, RX 3 pp. 32-33). Wage records from Dyno Noble confirm that Petitioner applied for FMLA leave and short-term disability benefits for this period. (RX 3). Petitioner was paid vacation hours for the periods July 7, 2023, through July 21, 2023, when he applied for leave of absence, and then received short term disability benefits from July 22, 2023, through his return to work on November 30, 2023. (Rx3 pg. 32-33).

Respondent obtained a record review with orthopedic spine specialist, Dr. Donald deGrange after Petitioner recovered from surgery and was released at MMI. Dr. deGrange’s report is dated September 9, 2024. (RX 1, Depo. Ex. 2) Dr. deGrange noted he reviewed the treating records of Petitioner from May 25, 2022, through January 23, 2024, including those of Dr. Clayton and Harrisburg Family Medicine, Barnes Jewish Hospital ER, Dr. Roberts and Deaconess Comprehensive Pain Center, Dr. Vaught and Regional Brain and Spine, and Dr. Kevin Rutz with Orthopedic Specialists. (RX 1, Depo. Ex. 2) After reviewing the relevant treatment records, Dr. deGrange opined in his September 9, 2024, report that Petitioner did suffer a work related sacral contusion on May 24, 2022. (RX 1, Depo. Ex. 2 p. 5) Petitioner had described to his treaters falling into the truck and striking his tailbone on a bar which was consistent with contusion to that area and imaging confirmed no acute osseous injury with preexisting multilevel degenerative changes in the lumbar spine. *Id.* Dr. deGrange further opined that the work accident of May 24, 2022, was not a cause of Petitioner’s condition of ill-being post May 31, 2022, when the contusion had improved, and he was

release to his full duty work. *Id.* He did not require any additional care or work restrictions post May 31, 2022, related to the work accident. *Id.* Dr. deGrange opined that any treatment after May 31, 2022, was not related to the work accident of May 24, 2022, including the September 28, 2023, surgery. Dr. deGrange went on to opine that there was a 14-month time lapse between the work incident of May 2022 and the first treatment related to back pain and radiation with Dr. Ford in July 2023; at which time the history provided was that the symptoms began 2-3 months before the July 2023 visit. (RX 1, Depo. Ex. 2 p. 5)

On request of counsel, Petitioner returned to Dr. Rutz on January 21, 2025, in order to obtain a causation opinion in anticipation for hearing. On January 21, 2025, Dr. Rutz noted that this visit was specifically for a causation opinion and there is no indication that Petitioner presented with complaints at that time. (PX 8 p. 31) In his January 21, 2025, note, Dr. Rutz observed that he had released Petitioner from care at MMI approximately one year prior. *Id.* Dr. Rutz reported that he was able to review Dr. deGrange's September 9, 2024, opinion report and he "understood the conclusion that Dr. deGrange came to." *Id.* His understanding was based on the medical records he was able to review from May 25, 2022, the gap in treatment until July 7, 2023, the history of complaints in July 2023 in the left lower back that started 2-3 months before, and Dr. Vaught's July 2023 note that there was a three month history of left low back and leg pain, and the May 2022 accident resulted in pain at the coccyx. *Id.* However, Dr. Rutz noted in his January 21, 2025, report that after speaking with Petitioner, he confirmed that he had pain in his tailbone in May 2022, but he also had some lower back pain that became worse later. (PX 8 p. 31). Petitioner advised Dr. Rutz in that he had been caring for his wife while she was going through cancer treatment, and he put his own needs aside. *Id.* Dr. Rutz did not note what period of time the Petitioner's wife cancer treatment occurred. (PX 8 pp. 31-32) Dr. Rutz opined that based on what Petitioner told him about the onset of some low back pain in May 2022, the work fall led to some degree of injury to his L5-S1 disc as Petitioner told him he had some intermittent back pain since that time and when it became worse, he required surgical intervention. (PX 8 p. 32) Based on the Petitioner's statements and what was documented in the one ER visit at Barnes on 7/10/2023, Dr. Rutz believed that the work fall in May 2022 contributed to his low back complaints and need for further medical attention through surgery. *Id.*

Dr. deGrange was provided Dr. Rutz's opinion report of January 21, 2025, and he issued an addendum report dated April 29, 2025. (RX 1, Depo. Ex. 3) Dr. deGrange noted the medical records support his prior opinions that Petitioner was at MMI from the tailbone contusion by May 31, 2022, without any involvement of the lumbar spine from the work accident. *Id.* It was Dr. deGrange's opinion that the opinions of Dr. Rutz in his January 21, 2025, opinion report were not supported and actually refuted by the available medical records. *Id.*

Deposition Testimony of Dr. Kevin Rutz

Dr. Kevin Rutz testified via deposition on April 22, 2025. (PX 11). He testified his practice consists of operative and non-operative conditions of the spine and he is board certified. (PX 11 p. 6) Dr. Rutz testified consistent with his medical records. He confirmed that Petitioner did have "some back pain" after his tailbone incident and initially the pain was intermittent, and his wife was going through cancer treatment, so he didn't seek care and just put up with pain, but eventually he had a new onset of pain down his leg and increased back pain, and he sought care. (PX 11 pp. 8-9) It was Dr. Rutz's understanding that Petitioner was a coal miner, and he continued doing heavy very physical work, which is not accurate (PX 11 p. 10). Dr. Rutz opined that there was an L5-S1 disc herniation, and lumbar degenerative disc disease and radiculopathy and that his "back pain from the injury to his disc was caused in part by his work injury." (PX 11 p. 11) However, the radicular pain developed remotely and coupled with the intrinsic degeneration and compromise to the disc. (PX 11 pp. 11-12) Dr. Rutz confirmed there was no additional treatment after Petitioner was released to full duty work at MMI in January 2024. (PX 11 p. 13) Dr. Rutz confirmed the reason he saw Petitioner in January 2025 was to review medical records provided by Petitioner's counsel and discuss the 14-month gap in treatment between May 2022 and July 2023 with Petitioner. (PX 11 p. 14).

Dr. Rutz testified that he did not find Petitioner to be ‘shady’ and was surprised when he reviewed the histories provided in Petitioner’s treatment records and findings in Dr. deGrange’s report because it did not mesh with his understanding as provided by Petitioner of his complaint history. (PX 11 pp. 14-15) Based on the medical evidence, Dr. Rutz testified he “could easily see” where Dr. deGrange came to his causation opinions. (PX 11 p. 15) However, when Dr. Rutz spoke with Petitioner in January 2025, he confirmed that he did have some degree of back symptoms since May 2022 but because of what he was dealing with for his wife’s cancer and he was still able to work full duty, he didn’t complain or seek care. (PX 11, pp. 15-16) Dr. Rutz opined that “with 20/20 hindsight I can look back and say...a portion of his symptoms came from the new progression of the disc disease, but his intermittent back pain that he had from the time of the initial injury was also resolved by the surgery. So that is why I considered the [work] injury to contribute to cause his symptoms.” (PX 11 p. 16). Dr. Rutz confirmed that the disc injury identified on MRI in July 2023, and for which surgery was performed can, and often do, result from degeneration alone, without a fall or injury, especially in a man of Petitioner’s age – 61 years old. (PX 11 pp. 25-26) He also confirmed that if the timeline was faulty about Petitioner having pain complaints in his back between 2022 and July 2023, his opinions regarding causation for surgical care would be affected – “if he simply had a tailbone contusion and did not have development of intermittent back pain, and then four months before I met him he developed back pain with radiculopathy, I would not consider that related to the [work] accident.” (PX 11 pp. 30-31)

Deposition Testimony of Dr. deGrange

Dr. Donald deGrange testified via deposition on May 6, 2025. (RX 1) He testified consistent with his opinion report of September 9, 2024, and his addendum report of April 29, 2025. Dr. deGrange confirmed that the only treatment note close in time to the work fall occurred on May 25, 2024 at which time Petitioner said he fell on a metal divider on his left butt cheek and tailbone. He continued to work but then had trouble waking and could only get comfortable on his right hip. X-rays were taken of the pelvis, which was significant in that there was no x-ray of the lumbar spine taken – because he did not have any low back pain. (RX 1 pp. 17-18) Petitioner was kept off work to recover from the contusion from May 25th through May 31, 2022, which Dr. deGrange opined was appropriate for this tailbone contusion injury. (RX 1 pp. 18-19) It was not until July 7, 2023, that Petitioner first presented with complaints of low back pain radiating to his left calf to his primary, Dr. Ford, and that pain had only started 2-3 months prior. (RX 1 pp. 19-20) Dr. Ford kept Petitioner off work due to the left hip weakness through July 12, 2023, and ordered imaging of the lumbar spine. (RX 1 p. 20) At no point did Dr. Ford mention in his record of July 7, 2023, continuing pain from the May 2022 fall, and he actually denied any falls or trauma as a cause of his complaints, consistent with the history given of pain complaints beginning around March 2023. (RX 1 pp. 20-21) Dr. deGrange noted the Barnes ER record of July 10, 2023, noting intermittent low back pain since a fall in 2022 on his tailbone but that the frequency had increased over the last two months and the findings on MRI showed multi-level degenerative changes throughout the lumbar spine and multi-level lumbar arthritis, with radicular complaints likely from left neuro foraminal narrowing at L5-S1. (RX 1 pp. 22-23) However, the orthopedic surgeon at Barnes/Wash U on July 10, 2023, noted a history of left leg pain worsening over the last two weeks that began a few months prior. (RX 1 p. 24) Dr. Roberts at the pain clinic also noted a two-month history of recurrent lumbar pain and that he fell on his coccyx a year ago, but the pain improved with medication and recurrence of lumbar pain over the last two months with increase in intensity the last two weeks. (RX 1 p. 26) Petitioner also gave a history to Dr. Vaught in July 2023 of a three-month history of low back pain and leg numbness in left S1 distribution. (RX 1, pp. 27-28) Dr. deGrange opined, consistent with his report, that Petitioner sustained a sacral contusion that resolved to the point of MMI as of May 31, 2022. (RX 1 p. 33) It was Dr. deGrange’s opinion that the treatment Petitioner received from July 2023 through January 2024 was reasonable, however, it was unrelated to the May 2022 work accident. (RX 1 pg. 35) This was based on the review of the medical records, the doctor’s education, training and experience as a board-certified orthopedic surgeon with fellowship training in spinal surgery. (RX1, pg. 35-36). The most common presentation of the condition for which Petitioner treated for his lumbar

spine in 2023 is spontaneous degeneration – just wake up with back pain and not sure what caused it. (Rx1, pg. 38).

CONCLUSIONS OF LAW

The findings of fact above are incorporated herein by reference.

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

Respondent stipulated that Petitioner sustained a compensable injury under the Act on May 23, 2022, and timely notice was provided. The primary issue at arbitration is causation for Petitioner’s current condition of ill-being, namely, low back pain and treatment related to the lumbar spine from July 7, 2023, through January 23, 2024.

Considering the credible evidence presented, the Arbitrator finds Petitioner did sustain an injury to his tailbone/coccyx on May 23, 2022. However, the Arbitrator finds and concludes that the extent of that injury was a contusion that had reached Maximum Medical Improvement by Petitioner’s return to work on May 31, 2022.

In support of this finding, the Arbitrator finds the opinion of Dr. deGrange to be more persuasive than that of Dr. Rutz. Dr. Rutz’s opinions regarding causation are not persuasive for several reasons. First, Petitioner *did* seek care in that 14-month period with his primary care, he just made no complaints about any back pain or any continuing pain from his fall on his tailbone in May 2022. He went to his primary for neck and shoulder pain on June 18, 2022, and he went to his primary care provider for fatigue symptoms and lab work in September and October 2022. Therefore, Dr. Rutz’s belief that Petitioner did not seek care in that 14 month period due to taking care of his wife and not going to the doctor himself for his alleged lumbar complaints is not credible. Second, there are multiple different treaters who all document Petitioner’s consistent history to them of new onset of back pain and radicular pain down the left leg beginning around March 2023, but that he didn’t seek care for these new complaints until July 2023 due to the fact he was caring for his wife with cancer. The only record besides Dr. Rutz’s that mentions continuing back pain from May 2022, is the single ER visit note at Barnes on July 10, 2023, but elsewhere in that same note, the consulting spinal surgeon, Dr. Barksdale, records a history consistent with all the other treaters – new onset of back pain with numbness down left leg the last few months, worsening over the past two weeks. (PX 6). The opinions of Dr. Rutz regarding causation for Petitioner’s low back pain and radiculopathy requiring surgical care for relief are not persuasive and are based on faulty information provided by Petitioner.

While Dr. Rutz was a treating surgeon, his first visit with Petitioner was not until August 15, 2023, 15 months after the work injury. He did not review any of the prior treating doctors visit records before he performed surgery on Petitioner, or even before he released Petitioner at MMI in January 2024. A causation opinion was requested of Dr. Rutz a year after Petitioner was released at MMI for the lumbar disc replacement surgery, with confirmation that the reasoning for the visit was to discuss with Petitioner what his complaints may have been for his low back between May 2022 and July 2023. Dr. Rutz’s opinion provides no clear medical support for his conclusions regarding causal connection, only notes Petitioner’s subjective history of continuing back pain that started after the work accident as the reasoning, despite the multiple other providers histories recorded indicating low back pain and radiation beginning approximately March 2023 and were unrelated to the May 2022 fall on his tailbone.

Dr. deGrange, on the other hand, reviewed the complete medical history of Petitioner from the date of accident through his report of September 9, 2024. These records document the complaints at the time of

the tailbone contusion in May 2022, the lack of any lumbar complaints at the time of the fall, the lack of any lumbar complaints between May 2022 and July 2023, despite seeking care for other conditions including fatigue and neck and shoulder pain in that period in contradiction to Petitioner's testimony that he didn't seek medical care of his own due to caring for his wife. The imaging in May 2022 was limited to the pelvis, as the complaints at that time were tailbone. There is no objective evidence of any injury to the lumbar spine from the May 2022 work accident. The opinions of Dr. deGrange are based on the uncontroverted medical evidence including the multiple medical providers recording the history provided by Petitioner of new onset of pain and radiation beginning approximately March 2023, without injury or trauma, and the need for lumbar disc replacement surgery unrelated to any work injury.

Taking all of the evidence submitted together, the Arbitrator finds Petitioner sustained a contusion to his coccyx/tailbone as a result of the fall on May 23, 2022. Any treatment after May 31, 2022, is unrelated to the work accident and his current condition of ill-being is not related to the work accident. The Arbitrator finds and concludes that Petitioner's work-related coccyx contusion reached Maximum Medical Improvement as of May 31, 2022. Any subsequent complaints, treatment, restrictions, or medication thereafter was unrelated to the work accident/injury.

J/K. 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? What temporary benefits are in dispute?

Treatment provided to Petitioner from May 23, 2022, through May 31, 2022, related to his tailbone contusion was reasonable and necessary to treat his condition, and related to the work accident. Treatment after May 31, 2022, is not related to Petitioner's work accident. Petitioner submitted medical bills for treatment provided relative to this claim. The parties stipulate Respondent is liable for any outstanding medical bills through May 31, 2022. Respondent is not liable for any medical care or expenses after May 31, 2022.

Petitioner alleged he was owed temporary total disability benefits from May 25, 2022, through May 31, 2022, a period of 7 days, as well as the period July 7, 2023, through November 20, 2023, a period of 19 4/7 weeks, for a total of 20 3/7 weeks. Based on the findings above regarding causal connection, Petitioner's demand for TTD benefits from July 7, 2023, through November 20, 2023, is denied. Petitioner was taken off work related to the tailbone contusion accident of May 23, 2022, from May 25, 2022, through May 31, 2022, which, after the three-day waiting period, equates to TTD due for 4 days. The arbitrator finds Petitioner is entitled to TTD for a period of 4 days as related to the work accident.

L. What is the nature and extent of the injury?

The credible medical evidence submitted at trial supports a conclusion Petitioner sustained a contusion to the tailbone as a result of his work accident on May 23, 2022. Pursuant to §8.1b of the Act, permanent partial disability for 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. Accordingly:

- (i) **Level of Impairment:** Neither party submitted an AMA Impairment Rating. The Arbitrator places no weight on this factor.
- (ii) **Occupation:** Petitioner's position at the time of his injury was an operator. Petitioner was able to continue working that job after a recovery period of seven days for his contusion to heal. He continued working full duty through his resignation for a job with a new employer in a

- warehouse in June 2022. He was able to continue working full duty for his new employer through hearing, with a short period of time off work for an unrelated lumbar surgery. The Arbitrator places greater weight on this factor.
- (iii) **Age:** Petitioner was 57 years old at the time of the accident. The Arbitrator places some weight on this factor.
 - (iv) **Earning Capacity:** Petitioner was released to return to work full duty. Petitioner did return to his pre-injury job. There was no evidence Petitioner suffered a loss in earning capacity as a result of this accident. The Arbitrator places no weight on this factor.
 - (v) **Disability:** The credible medical evidence submitted at trial supports a conclusion Petitioner sustained a contusion to the tailbone as a result of his work accident on May 23, 2022. Petitioner treated with a single visit to his primary care provider for left hip and tailbone pain that he treated with over-the-counter ibuprofen and a short course of hydrocodone-acetaminophen. X-rays of the pelvis were obtained and revealed no acute fracture or injury to the sacrum or other adjacent areas. Petitioner recovered from this fall injury with a short course of medication for pain control and rest for 7 days, after which he returned to work full duty and continued to work full duty through hearing without any evidence or testimony of continuing complaints or care required related to the coccyx or pelvis after MMI in May 2022. The arbitrator awards 1.5% loss of use of the whole person pursuant to Section 8(d)2 of the Act for the coccyx tailbone contusion Petitioner sustained on May 23, 2022.

Based upon the evidence submitted at hearing and the factors enumerated above, the Arbitrator finds Petitioner sustained a coccyx contusion, treated with a short course of conservative care. The Arbitrator finds and concludes Petitioner reached maximum medical improvement for his work-related injury on May 31, 2022, and no further treatment is contemplated for this work-related condition. The arbitrator awards 3% loss of use of the whole person pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC027583
Case Name	Insurance Compliance v. T&G Enterprises, 1 LLC dba Tailgaters Pub
Consolidated Cases	
Proceeding Type	Notice of Non-Compliance
Decision Type	Commission Decision
Commission Decision Number	26IWCC0170
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brett Kolditz
Respondent Attorney	

DATE FILED: 6/2/2026

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
)
 COUNTY OF PEORIA)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois
Department of Insurance,
Insurance Compliance Department¹,
 Petitioner,

Case # **24WC027583**
23INC00029

v.

Gregory Golden, individually, and dba T&G
Enterprises 1 LLC (Tailgaters Pub),
 Employers/Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 4,088 days. On March 20, 2026, after timely notice to Respondent, a hearing was held before Commissioner Mathis in Peoria, Illinois. Petitioner was represented by the Office of the Illinois Attorney General. Respondent, Gregory Golden, did not appear. A record was taken. Petitioner seeks fines and penalties allowed under the Act, 4,088 days during the period of December 21, 2011, through February 28, 2023, when Respondents did business and failed to provide coverage pursuant to the Act. Petitioner also seeks reimbursement of \$44,012.56 for money paid out in an award against Respondent and the Injured Workers Benefit Fund in 21 WC 026097.

The Commission, after considering the record in its entirety, and being advised of the applicable law, finds that Respondent knowingly and willfully violated section 4 of the Act and section 9100.10 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules). As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondent under section 4 of the Act in the sum of \$1,022,000, representing \$250.00 per day for each of the 4,088 days during the period from December 21, 2011, through February 28, 2023. Further, the Commission finds the Respondent shall reimburse the Injured Workers' Benefit Fund the sum of \$44,012.56 for payment of an award in 21 WC 026097.

¹ Formerly the Illinois Workers' Compensation Commission, Insurance Compliance Department

I. Findings of Fact

Investigator Thomas Ritter personally served Respondent Gregory Golden with a Notice of Non-Compliance Hearing on January 16, 2026. (Px.1). The Notice of Hearing properly identified the time and location of the hearing. Respondent failed to appear.

Michael Cummins, an Investigator for Insurance Compliance for the Illinois Department of Insurance, testified at the hearing. Mr. Cummins testified that Respondent was engaged in the operation of a bar named Tailgaters Pub. Tailgaters Pub is an establishment that serves food and liquor and has expanded to video gaming. The Respondent employs bartenders to dispense liquor.

Mr. Cummins further testified that the Department of Insurance researched Gregory Golden and T&G Enterprises and found that they did not have workers' compensation insurance for the periods stated in the notice of non-compliance. Petitioner introduced a certified statement from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (Px.3). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. The certificate, dated September 25, 2024, indicates that said records do not show policy information was filed showing proof of workers' compensation insurance for T&G Enterprises 1 LLC dba Tailgater's Pub for the periods from December 21, 2011, through February 28, 2023. The NCCI certification identified the business address as 509 N West Street, Leroy, IL 61752.

Further investigation showed that they were not a self-insured entity. A report from the Department of Self-Insurance states that T&G Enterprises 1, LLC dba Tailgater's Pub. was not self-insured. (Px.4). Records from the Illinois Secretary of State indicate Respondent, T&G Enterprises 1 LLC, was an active business during this period with an address of 509 N West St. Leroy, IL 61752. (Px.5). The Illinois Secretary of State identified Gregory Golden as the sole managing partner. (Ex.4).

The Commission takes judicial notice of 21 WC 026097, Nicholas Pauletto v. T&G Enterprises 1, LLC and the Injured Workers' Benefit Fund. (Px.7). On August 30, 2022, an Arbitration hearing was held in Bloomington, IL before Arbitrator Kurt Carlson. The Commission found that Nicholas Pauletto was an employee of Tailgaters Pub and sustained a work injury on March 20, 2012. The Commission further found that T &G Enterprises 1 LLC, Tailgaters Pub, and Greg Golden were operating an establishment at 509 N West St. Leroy, IL 61752 that served alcoholic beverages to the general public falling into the automatic coverage of Section 3 of the Act. The Commission found T&G Enterprises 1 LLC, Tailgaters Pub, and Greg Golden did not have workers' compensation insurance on March 20, 2012. As a result of the award in 21 WC 026097, the IWBF issued a check in the amount of \$44,012.56 on February 27, 2024.

The Commission notes that the evidence submitted in this matter is consistent with the Commission's prior findings in 21 WC 026097.

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: “establishment open to the general public wherein alcoholic beverages are sold to the general public for consumption on the premises.” 820 ILCS 305/3(12).

The Commission finds that Respondents’ business falls within Section 3(12) of the Act. The Commission found, in 21 WC 026097, that the business was a bar engaged in the sale of alcohol for onsite consumption. Investigator Cummins’ testimony confirmed that the bar was operating during the period of non-compliance consistent with the Commission’s prior findings. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers’ Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers’ compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act “by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois.” 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee “that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact.” 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of the Rules provides that “[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with section 9100.20 shall be deemed prima facie evidence of that fact.” 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of section 4(a). Section 4 of the Act requires that all employers and their employees, with the exception of sole proprietors, partners, or member of a limited liability company who elects not to provide and pay compensation for accidental injuries sustained by himself, come within the provisions of section 3 of the Act, and any other employer who shall elect coverage under section 2 of the Act, provide workers’ compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to the Respondent. (Px.4) The NCCI certification provided by Petitioner shows there was no policy information showing proof of workers’ compensation insurance for the period from December 21, 2011, through February 28, 2023.

The Commission now finds that there was no policy information showing proof of workers' compensation insurance for the periods of December 21, 2011, through February 28, 2023. Further, the Illinois Secretary of State records and prior Commission findings indicate the business was active and there is no evidence the business was exempt from the provisions of Section 3. Accordingly, the Commission concludes that Petitioner has proved, by a preponderance of the evidence, that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from December 21, 2011, through February 28, 2023.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, section 4(d) of the Act states:

“Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.” 820 ILCS 305/4(d) (West 2004).

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

In this case, Petitioner submitted into evidence the Notice of Non-Compliance and Notice of Hearing delivered to Gregory Golden, individually, in the form prescribed by the Rules. Accordingly, the Commission concludes that reasonable and proper notice of hearing was provided to Respondent.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the

employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, e.g., *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondent violated the Act by failing to obtain workers' compensation insurance was significant. The Respondent failed to have insurance for 4,088 days, from December 21, 2011, through February 28, 2023. The Commission notes the Respondent had one application for adjustment of claim during the period of non-compliance. The Commission also notes that the Respondent failed to comply with the Commission's order to pay Nicholas Pauletto for his March 20, 2012 work injury.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, and Respondent's failure to comply with the Commission's order in 21 WC 026097, the Commission assesses a penalty of \$1,022,000 against Respondent, that being \$250 per day for the period of 4,088 days between December 21, 2011, through February 28, 2023. Further, the Commission finds the Respondent shall reimburse the Injured Workers' Benefit Fund the sum of \$44,012.56 for payment of an award in 21 WC 026097.

The Commission further concludes that Respondents knowingly and willfully failed to comply with the Act based upon the original filing of the claim in 21 WC 026097 and for all time that transpired thereafter Respondents were aware that they were noncompliant with the Act in their continuing failure to obtain workers' compensation insurance.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Gregory Golden, individually, and dba T&G Enterprises 1, LLC (Tailgaters Pub), pay to the Illinois Department of Insurance the sum of \$1,066,012.56 pursuant to section 5(b) and 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 Department of Insurance; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a Circuit Court. Bond for the removal of this cause to the Circuit Court by 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.

June 2, 2026

d: 5-19-26

SJM/msb

44

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Amylee H. Simonovich

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC003520
Case Name	Florencia Montano v. Midway Staffing, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0171
Number of Pages of Decision	18
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Rosner, James McHargue
Respondent Attorney	Anthony Gattuso

DATE FILED: 6/3/2026

/s/ Maria Portela, Commissioner

Signature

24 WC 03520

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FLORENCIA MONTANO,

Petitioner,

vs.

NO: 24 WC 03520

MIDWAY STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision regarding causation and finds that the Petitioner's right shoulder condition is causally related to the work accident. The Commission modifies the award of medical expenses to include all outstanding bills between the date of accident of January 23, 2024, through June 13, 2025, subject to the fee schedule and modifies the award of temporary total disability benefits up to 70-4/7 weeks, from February 6, 2024 through June 13, 2025. Finally, the Commission reverses the denial of the prospective medical treatment recommended by Dr. Tu.

The Commission finds that the evidence supports that Petitioner's current condition of ill-being is causally related to the work accident. In the early morning hours of January 23, 2024, Petitioner was leaving work after her shift. The Respondent had not yet salted the parking lot and it was icy and wet. (T. 13) Petitioner slipped and fell backwards onto the ground. (T. 15) Petitioner was

taken by ambulance to Advocate Good Shepherd Hospital and underwent x-rays. (p. 16) She was diagnosed with a head injury, neck strain, thoracic spine contusion and lumbar spine strain. (Px1)

Petitioner attempted to return to work on January 24, 2024, and the company nurse sent her back to the hospital. (T. 17) Petitioner presented with a chief complaint of back pain, head injury and blurred vision. (Px2) The plan was to treat her back pain and refer to an ophthalmologist. (Px2)

On January 26, 2024, Petitioner returned to immediate care. (T. 18) Petitioner presented with a chief complaint of constant pain of the left scapular region, right scapular region, and upper back since the accident. Petitioner was sent home with pain medication, a back brace and work restrictions. (Px3) Petitioner returned to immediate care on January 30, 2024, and complained that she is only experiencing pain on her upper back towards her shoulder blade. Petitioner reported she was unable to work as her employer was unable to accommodate her restrictions. Petitioner was given a prescription for physical therapy and work restrictions. (Px3)

On February 6, 2024, Petitioner presented to Dr. Mohiuddin at Illinois Orthopedic Network and was taken off work. At that visit, Dr. Mohiuddin assessed Petitioner with mid to low back pain, right shoulder pain and cervicalgia. Dr. Mohiuddin prescribed medications, continued physical therapy and scheduled Petitioner for an in-person visit in two weeks. Dr. Mohiuddin additionally took Petitioner off work at that time. (Px4) Petitioner began physical therapy on February 7, 2024 again with complaints of neck pain, thoracic pain, lower back pain and right shoulder pain. (Px5)

Petitioner returned to Dr. Mohiuddin on February 13, 2024, at which time she was “jumping in pain” due to the right shoulder. Dr. Mohiuddin continued Petitioner in physical therapy, kept her off work and ordered stat MRIs of the cervical spine, thoracic spine and right shoulder. He additionally referred Petitioner to orthopedics for her right shoulder. (Px4)

On March 4, 2024, Petitioner was seen by Dr. Tu for her right shoulder. Dr. Tu diagnosed Petitioner with a right shoulder full-thickness rotator cuff tear. Dr. Tu could not proceed with injections during this visit due to Petitioner’s diabetes and an open wound on the back of her upper arm. (Px4, Px6) Petitioner continued to receive physical therapy and remained under the care of Dr. Mohiuddin. Dr. Mohiuddin also wanted to perform injections to Petitioner’s spine but could not do so due to her uncontrolled diabetes. (Px4)

Petitioner continued physical therapy and was seen by Dr. Mohiuddin for her back issues on April 3, 2024 and by Dr. Tu’s office on April 8, 2024, April 15, 2024, June 11, 2024, January 13, 2025, February 26, 2025 and April 8, 2025. Both physicians continued to recommend injections but could not proceed due to Petitioner’s uncontrolled diabetes. Dr. Tu was also recommending surgery, but could not proceed because of both Petitioner’s uncontrolled diabetes as well as the lack of authorization. (Px4, Px6)

The totality of the records supports a finding that the Petitioner injured her right shoulder at the time of the work accident. The Arbitrator causally connected Petitioner’s treatment for her head and spine to the work accident, but denied causation as to the right shoulder. The Commission finds that the Arbitrator incorrectly found that the first indications of right shoulder complaints were not made until the February 6, 2024 visit with Dr. Mohiuddin. The Arbitrator characterized the January 26, 2024 and January 30, 2024 visits wherein Petitioner complained of pain to the bilateral scapular

regions and upper back as devoid of complaints of pain to the right shoulder. The Arbitrator stated “No examination of the right shoulder on these dates showed any abnormalities.” (Arb. Dec., p. 7) The Arbitrator reasoned that neither the scapular region nor the upper back include the shoulder, but stated “no exam of the right shoulder on these dates showed any abnormalities” when neither record shows that a right shoulder exam was even conducted. The Commission disagrees with the Arbitrator’s assessment of the records and finds that the Petitioner credibly testified that she injured her right shoulder at the time of the work accident and that this testimony is corroborated by the medical records.

Petitioner was seen for three emergency visits by Dr. Mohiuddin and for physical therapy prior to being seen and/or treated by Dr. Tu. At the initial visits, it was noted Petitioner hit her head and possibly lost consciousness. As of February 7, 2024 when Petitioner was seen for her initial visit of physical therapy, she reported striking her right shoulder against her car and then momentarily losing consciousness. The Petitioner was complaining of pain to her shoulder area within a couple of days of the accident and was also providing an account of falling on her right side within a couple of weeks of the accident. The Arbitrator did not account for the fact that Petitioner had no history of right shoulder problems and was able to work full duty prior to the accident, but had a torn rotator cuff and significant limitations to her right shoulder following the work accident.

The Commission finds that the Petitioner sustained an undisputed accident where she clearly sustained injuries to multiple body parts including her head, neck, back and right shoulder. The Petitioner’s account of the accident was overall consistent in what she relayed to the medical providers and there is objective diagnostic evidence corroborating her injuries. Additionally, the Commission finds Dr. Tu’s opinions more persuasive than those of Respondent’s Section 12 examiner, Dr. Neal. Dr. Neal ignored the diagnostic findings and attributed Petitioner’s injuries to “psychogenic” complaints. This is objectively against the diagnostic evidence. The Commission finds that the Petitioner has met her burden of proof that her current condition of ill-being as to the right shoulder is also causally related to the January 23, 2024 work accident and modifies the Arbitrator’s denial regarding causal connection.

The Commission modifies the medical expenses awarded to include the outstanding bills of Midwest Specialty Pharmacy, Medlegal, Illinois Orthopedic Network, G&T Orthopaedics and La Clinica. The records of Dr. Mohiuddin support that the Petitioner’s treatment stalled based on her uncontrolled diabetes and not because her conditions resolved or the Petitioner reached MMI. Additionally, the Arbitrator’s denial of the bills of ION concerning the creams, patches and gels as “these charges [are] very excessive and unnecessary” (Arb. Dec., p. 8) is not supported by the evidence. The Arbitrator provides no basis on which he finds the charges excessive or unnecessary. There are no URs in evidence nor is there an opinion by Dr. Neal addressing the effectiveness or necessity of these treatments. As the Petitioner was not at MMI, and the Commission finds the Petitioner’s right shoulder condition was causally connected to the work accident, the outstanding medical expenses contained in Px1 through Px6 are awarded, subject to the fee schedule. Respondent shall receive a credit of \$7,394.06 pursuant to Section 8(j) for bills paid.

The Commission also modifies the award of temporary total disability benefits. The Arbitrator only awarded temporary total disability benefits from February 13, 2024 through March 13, 2024. The evidence supports that Petitioner worked some form of light duty and/or was at work after the date of accident of January 23, 2024 and through February 4, 2024. However, Dr. Mohiuddin took

Petitioner off work on February 6, 2024, at their first encounter. The Commission finds that the Arbitrator's denial of an additional week of temporary total disability benefits on the basis that this was a telehealth visit, has no basis. There is no case law to support the proposition that a telehealth visit is not a valid visit or that a telehealth is not a valid method by which a treating physician can impose work restrictions. Petitioner was actively treating and was kept off work beginning February 6, 2024. The Commission therefore awards temporary total disability benefits for a period of February 6, 2024, through the date of hearing on June 13, 2025.

Additionally, the Commission awards the prospective medical treatment recommended by Dr. Tu pertaining to the right shoulder.

Finally, although the Petitioner sought review for permanent partial disability, the Commission finds that as Petitioner has not yet reached MMI, this issue is not ripe. The Commission remands this case to the Arbitrator for further determination.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$571.54 per week for a period of 70-4/7 weeks, from February 6, 2024 through June 13, 2025, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$49,125.58 (Midwest Specialty Pharmacy: \$7,982.83; Medlegal: \$12,000.00; Illinois Orthopedic Network: \$1,287.75; G&T Orthopaedics: \$1,435.00 and La Clinica: \$26,420.00) for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act. Respondent shall receive a credit of \$7,394.06.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent authorize and pay for the prospective medical treatment recommended by Dr. Tu for Petitioner's right shoulder condition, consisting of ongoing office visits, injections and surgery to the right shoulder once the Petitioner's diabetes is under control.

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.

24 WC 03520

Page 5

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.

June 3, 2026/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

O: 042326

49

/s/ Marc Parker

Marc Parker

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC003520
Case Name	Florencia Montano v. Midway Staffing, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Adam Rosner, James McHargue
Respondent Attorney	Anthony Gattuso

DATE FILED: 9/12/2025

/s/ Michael Glaub, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 9 2025 3.73%

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Florencia Montano

Employee/Petitioner

v.

Midway Staffing

Employer/Respondent

Case # **24** WC **003520**

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 **Michael Glaub**, Arbitrator of the Commission, in the city of **Rockford**, on **June 13, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the accident date, **January 23, 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 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 right shoulder condition of ill-being *is not* causally related to the accident. Petitioner's cervical, thoracic and lumber spine conditions and petitioner's head condition are causally related to the accident.

In the year preceding the injury, Petitioner earned **\$857.31 during the 52 weeks prior**; the average weekly wage was **\$857.31**.

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 **\$310.71** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for medical, and **\$0** for other benefits, for a total credit of **\$0**.

Respondent is entitled to a credit of **\$7,394.06** under Section 8(j) of the Act.

ORDER**Temporary Total Disability**

Respondent shall pay Petitioner and Petitioner's counsel temporary total disability benefits of \$571.54 for 4 and 1/7 weeks, commencing February 13, 2024, through March 13, 2024, 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 Medlegal (ION) involving treatment and diagnostic testing from February 6, 2024 through March 13, 2024 to the cervical spine, thoracic spine and lumber spine as well as the head contusion; La Clinica, treatment from February 7, 2024 through March 13, 2024"; Midwest Specialty Pharmacy \$30.60.

Prospective Medical

The Arbitrator denies petitioner's request that respondent authorize the right rotator cuff repair and subacromial decompression and associated care as recommended by Dr. Tu.

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.

Michael Glaub
Signature of Arbitrator

September 12 2025

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

ILLINOIS WORKERS’ COMPENSATION COMMISSION

Florencia Montano,)
)
Petitioner,)
)
v.) Case No. 24 WC 003520
)
Midway Staffing,)
)
)
Respondent.)

FINDINGS OF FACT

This matter proceeded to hearing on June 13, 2025, in Rockford, Illinois before Arbitrator Michael Glaub on Petitioner’s Petition for Immediate Hearing under Sections 19(b) and 8(a). The issues in dispute were causal connection, medical bills, TTD benefits, and prospective medical. Arbitrator’s Exhibit 1 (AX1).

Accident

Petitioner was last employed by Respondent, Midway Staffing, and was placed at a frozen food company in January of 2024. (T10). Petitioner testified that she worked at the frozen food company for around three weeks to a month as a packer. (T10-11). As a packer, Petitioner would make boxes, place insulation inside the boxes, and pack the boxes. (T11). Petitioner testified her typical shift was from 4:00 PM to 4:00 AM. (T12).

Petitioner testified that she worked for Respondent on January 22, 2024 with her typical shift. (T12) Petitioner testified that as she left her shift that night (next day) around 2:00 AM, the parking lot was wet and icy. (T13). Petitioner testified that she slipped while walking to her car. (T13) Petitioner testified that as she slipped, she attempted to balance herself, but she ended up falling backwards onto her right side on the ground, striking her head (T13-14) Petitioner testified that her hair clip broke when she hit her head and when she went to touch the back of her head, she noticed blood (T14). Petitioner testified that she hit her right shoulder on the ground as well (T15). However, the treating medical records of the initial three medical providers contain no history or reference that she struck or injured her right shoulder at the time of the accident (Px1, Px2, Px3). Petitioner testified that her supervisor called an ambulance, and Petitioner was taken to the emergency room (T15-16).

Summary of Medical Records

On January 23, 2024, Petitioner presented at Advocate Good Shepard Hospital. Petitioner tendered a history that she fell on her back and her head (Px1, p5-6 & 15). Petitioner made no reference to falling on her right side. Petitioner only complained of head, neck and back pain (Px1, p15). Petitioner made no complaints of right shoulder pain. X-rays of her spine were performed. CT scans of her head and cervical spine were also performed. (Px1, p10-11) No diagnostic testing was performed on the right shoulder. Petitioner was diagnosed with a closed head injury, an acute cervical strain, a thoracic contusion and a lumbar strain. (Px1, p14) There was no diagnosis of any injury to the right shoulder. The CT scans of her head and cervical spine and x-rays of her lumbar and thoracic spine, which were normal (Px1).

On January 24, 2024, Petitioner presented to Northwestern Medicine with back pain, blurred vision and closed head injury (Px2, p17). Petitioner tendered a history of falling at work the previous day (Px2, p17). X-Rays were again performed of the lumbar spine and right hip were performed and were normal. Petitioner made no complaints of right shoulder pain, no diagnostic testing was performed regarding the right shoulder and no examination was performed on the right shoulder (Px2, p19). On physical examination, right paraspinal lumbar/hip tenderness and a positive dorsiflex great toe were noted. Petitioner was assessed with persistent intermittent binocular blurry vision and low back pain as a result of the work accident.

Petitioner treated at Physicians Immediate Care on January 26, 2024, and January 30, 2024, with pain in her upper back and bilateral scapular regions (Px3, p7,9). There is no reference to pain in the right shoulder. Petitioner tendered a history of falling on her back and hitting her head (Px3, p7,9) There is no history in the medical records that petitioner struck her right side. There was an examination of the petitioner of the petitioner's bilateral upper extremities. It was specifically found that upper extremity muscle strength was intact (Px3, p9). The diagnosis was thoracic strain and acute back pain (Px3, p10) Petitioner was released to light duty work (Px3, p10). There was no referral physical therapy on this date.

Petitioner returned to Physicians Immediate Care on January 30, 2025. These records indicate that the petitioner was only experiencing pain in her upper back towards her (unidentified) shoulder but wants to return to work full duty (Px3, p23). However, under "Physical Exam" it is noted that the Muscular exam was abnormal on the left side and normal on the right side (Px3, p24). The records of this date contain no reference to falling on her right side and no reference to a right shoulder injury. The diagnosis was muscle strain and acute back pain. There is a reference that petitioner's back pain has improved but that she had upper right back pain. They also reported tenderness to the right upper back upon palpation (Px3, p25). The petitioner was given an authorization for physical therapy 2 times per week for six weeks (Px3, p26).

The medical report of respondent's Independent Medical Examination from Dr. Neal indicates that petitioner tendered a history that her attorney sent her to a place for physical therapy where she was seen about 13 times (Rx1, p3). The medical records indicate petitioner commenced treating with ION (Illinois Orthopedic Network) and La Clinica.

On February 6, 2024, Petitioner presented to Dr. Mohiuddin. The medical records of this date indicate this was a telephonic visit as opposed to an in-person visit. The petitioner also confirmed in her testimony that she did not see Dr. Mohiuddin in person on this date (T37). This is the petitioner's initial complaint of right shoulder pain. However, the medical records still contain no history that petitioner feel on her right side when she slipped and fell on January 23, 2024 (Px4, p27). The petitioner did complain of mid to low back pain, numbness/tingling down the right leg, 8/10 right shoulder pain, and 8/10 neck pain (Px4, p27). Dr. Mohiuddin recommended physical therapy. Even though he did not examine the patient, Dr. Mohiuddin authorized the Petitioner off work (Px4, p29). Petitioner engaged in physical therapy at La Clinica from February 7, 2024, through May 29, 2024 (Px5).

Petitioner saw Dr. Mohiuddin in person for the first time on February 13, 2024. She complained of continued neck pain, right shoulder pain, and lower back pain with radiating pain down her right lower extremity (Px3, p31). On physical examination, Dr. Mohiuddin noted tenderness of the cervical spine, positive Spurlings on the right, pain with range of motion of the right shoulder, lumbar spine tenderness, positive facet loading on the right, positive straight leg raise on right, and positive FABER on right. Dr. Mohiuddin recommended MRIs of the cervical spine, thoracic spine, lumbar spine, and right shoulder.

On February 21, 2024, Petitioner underwent multiple MRIs. The cervical MRI showed disc bulges at C4 through C7 with mild compression at C5-6 on the right. Id. The lumbar MRI showed desiccation of the discs, disc bulges from L4 through S1, and impingement of the nerve roots at those levels. The MRI of the thoracic spine showed desiccation of the discs and a soft tissue contusion (Px4, p35).

The MRI of the right shoulder showed:

1. Arthropathic right acromioclavicular joint
2. Right supraspinatus tendinosis, interstitial tear. High-grade articular surface tear and 4 mm full-thickness tear. Follow-up is recommended
3. Right subscapularis tendinosis and interstitial tear
4. Right infraspinatus tendinosis
5. Altered signals at the coracohumeral and superior glenohumeral ligament with fluid signals at the rotator interval suggest posttraumatic injury.
6. Mild right glenohumeral effusion
7. Tenosynovitis of the long head of the right biceps brachii tendon with imaging features suggesting partial tear of the intra-articular segment extending to the bicipital anchor and superior labrum (Px4, p37).

On March 4, 2024, Petitioner presented to Dr. Tu at G&T Orthopedics. Petitioner complained of right shoulder pain, difficulty with overhead and reaching activities (Px6, p2) On physical examination, Dr. Tu noted open lesions at the posterior aspect of the upper arm, positive Neers and Hawkins tests, and reduced supraspinatus and infraspinatus strength (Px6, p2). Dr. Tu reviewed the right shoulder MRI and believed it showed a full-thickness rotator cuff tear with AC joint arthropathy. Dr. Tu recommended a course of physical therapy and placed Petitioner on light duty work restrictions. Petitioner followed up with Dr. Tu on April 8, 2024 (Px6, p3) and

April 15, 2024 (Px6, p4) with similar subjective complaints and physical examination findings. Dr. Tu noted that Petitioner was diabetic and could not perform any injections or surgery at that time due to non-healing lesions on her back.

Petitioner also returned to Dr. Mohiuddin on March 12, 2024, with 8/10 neck pain with radiating pain to the right trapezius with numbness and tingling to the right hand and 8/10 mid to low back pain with pain radiating down right leg to the knee with numbness and tingling radiating along the posterior thigh (Px4, p46). On physical examination, Dr. Mohiuddin noted positive physical examination findings for the right shoulder, cervical spine, and lumbar spine. Dr. Mohiuddin recommended a C6-C7 cervical epidural steroid injection, but Petitioner needed clearance from her PCP. Petitioner followed up with Dr. Mohiuddin on April 3, 2024, with similar subjective complaints and physical examination findings. Dr. Mohiuddin placed the injection on hold until Petitioner's diabetes was under control.

On March 13, 2024, Petitioner presented for an Independent Medical Examination with Dr. Neal, with a report dated March 22, 2024. (Rx1). At the Independent Medical Examination, Petitioner had subjective complaints in the lateral aspect of the right side of the neck, right shoulder, and right shoulder girdle area. On physical examination, Dr. Neal noted several painful maneuvers with Petitioner including range of motion. Dr. Neal noted that he had to stop during some of his physical examination tests and that Petitioner became tearful during the examination. Dr. Neal diagnosed Petitioner with medically unexplainable and non-physiological lateral right-sided neck pain, spinal column pain, right shoulder girdle, right shoulder, and right upper extremity pain, and suspected intrinsic underlying psychogenic confounders. Dr. Neal reviewed the diagnostic imaging including the right shoulder MRI, which showed right shoulder rotator cuff tear.

Dr. Neal opined that Petitioner did not have a true musculoskeletal diagnosis and that Petitioner reached MMI six weeks after the work accident for any soft tissue contusion/sprain "if one is of the persuasion any such soft tissue contusion or strain occurred". Dr. Neal opined that Petitioner's diagnostic findings were clinically irrelevant to her current condition. Dr. Neal suspected that Petitioner has an underlying psychogenic and psychiatric undercurrents. Dr. Neal opined that Petitioner required no additional treatment as it related to her work accident and that she may return to full duty work.

On April 15, 2024, Dr. Tu reviewed Dr. Neal's report in which he disagreed with Dr. Neal's opinions (Px6, p4). Dr. Tu opined that Petitioner had findings consistent with a full-thickness rotator cuff tear. Dr. Tu opines that Petitioner was working prior to the work accident without any restrictions, and that Petitioner falling onto her right side is a mechanism for developing a rotator cuff tear. Dr. Tu noted that Petitioner was not a good candidate for surgery at that time due to the non-healing lesions, but once her diabetes was more controlled, he would consider surgical intervention for the right shoulder.

Testimony of Petitioner

Petitioner testified that her back, head, and right shoulder hurt at the emergency room following the work accident. (T16). Petitioner testified that she went to work the day following the work accident, but she was sent back to the hospital. Petitioner testified that while treating at Physicians Immediate Care, she worked in a light duty position for Respondent using only her left-hand placing flyers into boxes. (T18). Petitioner testified she was taken off work by Dr. Mohiuddin on February 6, 2024, and has not returned back to work for Respondent or any other employer since that date (T19,20).

Petitioner testified that she was diabetic, and prescribed cervical injections were put on hold until she got her blood sugar under control (T22). Petitioner testified that after Dr. Tu recommended shoulder surgery, she followed up with her PCP regarding her diabetes (T23,24). Petitioner testified her blood sugars have improved (T24). Petitioner testified that as of the date of trial, she continues to follow up with her PCP to improve her blood sugars so that she may proceed with the recommended shoulder surgery (T24,25). Petitioner testified she wished to proceed with the surgery recommended by Dr. Tu (T25). Petitioner testified that Respondent has not offered her any light duty position since February 6, 2024. Petitioner testified that she has difficulty washing dishes and bathing due to her right shoulder condition (T26). Petitioner testified that she is right hand dominant.

Cross Examination of Petitioner

Petitioner testified that she was able to work for Respondent full duty without issue prior to the work accident. Id. at 27. Petitioner testified that she felt pain in her right shoulder immediately following the work accident. Id. at 29-30. Petitioner testified that she massages her right shoulder to feel better. Id. at 30-32. Petitioner testified that she cried during her appointment at Lake Forest Hospital due to the pain. Id. at 31-32. Petitioner testified that she took ibuprofen on the trial date, and it made her symptoms better, but once the medication wears off, her pain increases. Id. at 31-32. Petitioner testified that she was guarding of her right shoulder during physical examinations with her treating physicians. Id. at 34.

Petitioner testified that her pain was reduced while she treated at Physicians Immediate Care due to pain medication. Id. at 36-37. Petitioner testified that she cried during her examination with Dr. Neal because she had her son there to assist her in putting on her gown, which embarrassed her. Id. at 41-42. Petitioner testified that she wished to undergo the surgery if her A1C levels were regulated. Id. at 45. Petitioner testified that she is improving her diet per her PCP's recommendations to improve her blood sugars. Id. at 45.

Redirect Examination of Petitioner

Petitioner testified that when she takes ibuprofen or Tylenol, it improves her symptoms (T47). Petitioner testified that she has been following her doctor's instructions to improve her A1C.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her not to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted, specifically the treating medical records, and found material contradictions that deems the witness not to be credible.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation 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. Causation between the work-related accident and condition of ill-being can be established by

showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

On January 23, 2024, Petitioner fell in the parking lot when attempting to go to her car early in the morning after leaving her shift. Petitioner fell backwards and hit her head and further claims she fell on the right side of her body. The Arbitrator notes that accident is not in dispute. However, the petitioner's testimony regarding landing on her right side of her body is contradicted by the three different medical facilities where she treated on four separate visits. All of the medical records of the initial three treating physicians contain a history that the petitioner hit her head and landed on her back. Therefore, the Arbitrator finds Petitioner's testimony regarding falling on her right side is not credible.

During the onset of treatment, Petitioner only had pain complaints in her head, neck and back. None of the initial visits to three medical providers involved any diagnostic testing or treatment to the right shoulder. The only examination of the right upper extremity is listed as normal. Petitioner was diagnosed with a head injury and blurry vision as a result of hitting her head during her initial treatment at Advocate and Northwestern. Multiple diagnostic testing was performed at the initial two medical visits only involved the petitioner's head and spine. None of the initial visits involved any diagnostic testing of the right shoulder. An MRI of the cervical spine and lumbar spine on February 21, 2024, showed disc bulging at multiple levels with stenosis. The MRI of the thoracic spine showed a contusion and disc desiccation.

Petitioner's current primary complaint is her right shoulder. While petitioner testified that when she fell, she fell onto her right side, hitting her right shoulder on the ground. The first indication of right shoulder complaints was on February 6, 2024, with Dr. Mohiuddin. The January 26, 2024, Physicians Immediate Care records mention pain in Petitioner's bilateral scapular regions, but the scapular area is not the shoulder. The January 30, 2024, note indicates pain in her right upper back but the right upper back is not the shoulder. No examination of the right shoulder on these dates showed any abnormalities.

Petitioner treated with Dr. Tu from March 4, 2024, through April 15, 2025. Throughout Petitioner's treatment with Dr. Tu, she had consistent complaints of right shoulder pain. Dr. Tu noted several positive physical examination findings including Hawkins and Neer's tests, and difficulty with range of motion. Dr. Tu noted that prior to Petitioner's work accident, she was working without any restrictions. Dr. Tu opined that Petitioner had findings consistent with a rotator cuff tear, and that he believed that a fall onto an individual's shoulder is a mechanism of injury for development of a rotator cuff tear. Dr. Tu found that Petitioner's right shoulder condition was causally related to the work accident based on petitioner's history of striking her right shoulder. Dr. Tu recommended right shoulder surgery pending clearance by her PCP.

Respondent relies upon Dr. Neal's IME report in that Dr. Neal opined that Petitioner's pain complaints were likely "psychogenic" and not related to any orthopedic injury. The Arbitrator acknowledges that Petitioner was extremely guarded during her physical examinations.

The Arbitrator finds Dr. Tu's medical opinions is based upon his understanding that the petitioner struck or fell on her shoulder. No deposition was taken to explain why the petitioner had no complaints of right shoulder pain at her first four visits to three separate medical providers despite his diagnosis that petitioner had a full tear of the right rotator cuff. Further there is no indication Dr. Tu was even aware that the histories in initial three medical providers contain no reference that petitioner fell on or struck her right shoulder or the right side of her body at the time of the accident. Again, there was no deposition performed to address this issue either.

Based on the above, the Arbitrator finds that the Petitioner failed to prove her right shoulder condition of ill-being is causally related to the January 23, 2024, work accident. The Arbitrator does find that the petitioner's cervical, thoracic and lumber spine conditions are causally related to the accident. The Arbitrator finds the petitioner's head contusion is also causally related to the accident.

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

The Arbitrator finds that the medical services provided to Petitioner by Advocate Good Shepard Hospital, Northwestern Medicine, Physician's Immediate Care were reasonable and necessary for the January 23, 2024, work accident.

The Arbitrator also finds that the treatment involving physical examinations of the petitioner and telephonic consultations with petitioner by Dr. Mohiuddin between February 6, 2024, and March 13, 2024, are reasonable and necessary. The Arbitrator finds that the MRI's performed at ION of the cervical, thoracic and lumber spines are reasonable and necessary (even if they were duplicitous). The Arbitrator denies the charges for the MRI of the right shoulder based on the Arbitrator's finding of causal relation regarding the right shoulder. The Arbitrator denies the medical bills of ION/Dr. Mohiuddin after March 13, 2024, as the Arbitrator adopts the medical findings and opinions of Dr. Neal of that date which state petitioner was at maximum medical improvement for her cervical, thoracic and lumber pine conditions as well as her head contusion. The Arbitrator also denies the medical bills of ION concerning the creams, patches, gels. The Arbitrator finds these charges to be very excessive and unnecessary. The Arbitrator finds the Diazepam prescription to be reasonable and necessary (Px4, p72,73).

The Arbitrator denies the medical bills of Dr. Tu and G&T Orthopedics as this treatment was for the right shoulder. The Arbitrator found above that the petitioner's right shoulder condition is not causally related the petitioner's accidental injuries of January 23, 2024.

The Arbitrator finds that the medical bills of La Clinica regarding chiropractic treatment to the cervical, thoracic and lumber spine to be reasonable and necessary from February 7, 2024, through

March 13, 2024. The Arbitrator denies any medical treatment to the right shoulder by La Clinica based on the causal relation finding. The Arbitrator denies any and all treatment at La Clinica after March 13, 2024 based on the medical opinions of Dr. Neal set forth above stating petitioner had reached maximum medical improvement on that date.

All medical bills that the Arbitrator has awarded are subject to the reductions as set forth by the Illinois Medical fee Schedule.

The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act of \$7,394.06.

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

Following the work accident, Petitioner worked in a light duty capacity for Respondent until February 5, 2024. Dr. Mohiuddin placed Petitioner off work from February 6, 2024, through the last date of his treatment on April 8, 2025. The Arbitrator however notes that while Dr. Mohiuddin authorized the petitioner off work on February 6, 2024, he did not actually see and examine the petitioner until February 13, 2024. However, the Arbitrator also notes that Dr. Mohiuddin did not physically see or examine the petitioner between April 3, 2024, and April 8, 2025. Petitioner was not even physically seen by Dr. Mohiuddin until February 13, 2024. Petitioner testified that Respondent could not accommodate her work restrictions after February 6, 2024. However, the Arbitrator finds this testimony to be very suspicious as respondent did provide light duty work to the petitioner from the date of the accident until Dr. Mohiuddin authorized her to be off work on February 6, 2024, and petitioner stopped showing up to work. There was no testimony from the petitioner that she ever presented the light duty restrictions of Dr. Tu to the respondent. There is also no evidence that petitioner ever sought work anywhere within the restrictions of Dr. Tu. While surgery has been recommended, the petitioner has not received any active type of treatment since the end of May 2024.

Dr. Neal found that the petitioner could return to work full duty on March 13, 2024. The Arbitrator adopts the opinion of Dr. Neal on this issue. The Arbitrator also found above that the petitioner's right shoulder condition is not causally related to her accident of January 23, 2024.

Based on the above, the Arbitrator finds Petitioner was temporary totally disabled from February 13, 2024 (the date Dr. Mohiuddin first saw the petitioner) through March 13, 2024 (the date of the exam of Dr. Neal. The Arbitrator finds the petitioner failed to prove she is entitled to any other temporary total disability benefits. Respondent is entitled to a stipulated credit of \$310.71 in TTD already paid.

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

Based on the Arbitrator's finding that the petitioner's right shoulder condition is not causally related to her accidental injuries of January 23, 2024, the petitioner's request for prospective medical care for the right shoulder is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012598
Case Name	Edward Ash v. Elgin Industries
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0172
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Edward Januszkiewicz

DATE FILED: 6/4/2026

/s/Frank Soto, Commissioner

Signature

24 WC 12598

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD ASH,

Petitioner,

vs.

NO: 24 WC 12598

ELGIN INDUSTRIES,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 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.

24 WC 12598

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 \$53,000.00. 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.

June 4, 2026

O: 4/22/26

FJS/mek

046

/s/ Frank J. Soto
Frank J. Soto

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012598
Case Name	Edward Ash v. Elgin Industries
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Edward Januszkiewicz

DATE FILED: 10/9/2025

/s/ Roma Dalal, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 7 2025 3.70%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Edward Ash
 Employee/Petitioner

Case # **24** WC **012598**

v.

Consolidated cases: _____

Elgin Industries
 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 **Dalal**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 5, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 2, 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 **\$50452.74**; the average weekly wage was **\$970.24**.

On the date of accident, Petitioner was **62** years of age, *married* with **0** dependent children.

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

Respondent shall be given credit for all TTD and medical bill payments it has made.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$646.85/week** for 61 5/7 weeks, commencing April 3, 2024 through April 12, 2025 and again from June 8, 2025 through August 5, 2025, as provided in Section 8(b) of the Act. Respondent gets credit for TTD benefits it paid.

Respondent shall pay Petitioner temporary partial disability benefits as outlined in the decision for 8 weeks, commencing April 13, 2025 through June 7, 2025 as provided in Section 8(b) of the Act. Respondent gets credit for benefits it paid.

Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by his treating physicians in regards to his right hand and thumb, to include but not limited to surgery of a plate removal in the thumb and a right carpal tunnel release.

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
19(B) ARBITRATION DECISION**

<u>Edward Ash</u>	)		
	)		
Employee/Petitioner,	)	Case No.	24 WC 12598
v.	)		
	)		
<u>Elgin Industries</u>	)		
	)		
	)		
	)		
Employer/Respondent.	)		

FINDINGS OF FACT

This matter proceeded to hearing on August 5, 2025, in Wheaton, Illinois before Arbitrator Dalal on Petitioner's 19(b) Petition for Hearing. Issues in dispute include causation, TTD and TPD benefits, disputed medical bills and future medical. (Arb. Ex. 1 and T.5). The parties acknowledged there was another case 24 WC 24636. Arbitrator Dalal granted an oral motion to deconsolidate the cases. The parties agreed to proceed only on case 24 WC 012598. (T.7).

Edward Ash (hereinafter referred to as the "Petitioner"), testified he was working on April 2, 2024 for Elgin Industries (hereinafter referred to as the "Respondent"). On that date he worked for a tube mill operator and was striking a heavy mallet downward. (T.11). As he was striking the mallet, he felt his right thumb pop. (T.12). Petitioner noted he never had previous thumb problems. (T.12).

Petitioner testified he ultimately went in for surgery and had a plate and four screws in his thumb. (T.12). Subsequently he developed numbness and tingling into his non-thumb fingers a few months after surgery. (T.13). He first reported the numbness to physical therapy. (T.13). Petitioner testified that he was immobilized for a period of time because he had a plate in his thumb. (T.14).

When he started using his hands it was bothering him. (T.14). Petitioner confirmed he did not reinjure his thumb. (T.14). Petitioner noticed his hand was swollen after the surgery. (T.15). Petitioner testified he was eventually referred to an EMG and diagnosed with carpal tunnel. (T.16). Petitioner testified that he wants to undergo the surgery. (T.17). He also planned to have the plate removed from the hand during that surgery. (T.17-18).

Petitioner testified he was terminated as of October 23, 2024. (T.20). Petitioner subsequently found work at Markland as a house parent. He was in charge of doing things he would do at his own home, like make breakfast for the residents, make the beds, and take the trash out. (T.21).

Petitioner did not reinjure himself at the new job, but the work movements irritated his hand. (T.22). Petitioner remained in this job for eight weeks from April 13, 2025 through June 7, 2025. (T.23). Petitioner noted that he now has been hired to work with DoorDash but has yet to begin. (T.24).

Currently, Petitioner testified he does not have much strength. (T.24). He also does not have much gripping power. Any time he bends the thumb it hurts. (T.25). Petitioner noted in the morning he feels the numbness and tingling in his hand. (T.26). Lastly, he noted his current restrictions were five pounds to lift, push, pull and twist in March of 2025. His current restrictions as of June 18 were ten pounds. (T.27).

On Cross-Examination, Petitioner confirmed he only reported the initial injury to the right thumb. (T.30). He also told the physicians at Fox Valley he only injured his right thumb. (T.32). Petitioner testified that he could not recall specifically when he reported numbness after waking up, probably September, but that it started a couple of months after surgery. Petitioner believed it was probably September when his hand started to go numb. (T.36).

Petitioner also noted he was diabetic and treats with his personal physician Dr. Kerpe. (T.39). Petitioner confirmed he saw Dr. Vender on January 16, 2025. (T.40-41).

Petitioner noted his hand was braced after the August surgery. (T.43) He was taken out of the brace in late September and told he could start moving the hand. (T.43) Gentle strengthening was to begin in mid-October. (T.43) Numbness and tingling appeared in the hand at that point. (T.44). Petitioner also confirmed that his diabetes is under control. (T.44).

Petitioner placed a Tube Mill Operator job description into evidence. (PX5, p.20).

Medical Summary

On April 2, 2024 Petitioner presented to Physicians Immediate Care noting he was using a sledgehammer and swinging it straight down and hurt his thumb. There was no direct impact on the thumb. Petitioner noted the pain was on the right on the lower knuckle. Petitioner noted a pop. Petitioner was diagnosed with a contusion of the right thumb and advise to follow up with orthopedics. (PX2, p.3-5).

Petitioner presented on April 4, 2024 for complaints of right thumb pain. Petitioner reported that 2 days prior he was at work using a mallet to hit an item when he felt a “pop” in his right thumb; pain located in the MP joint. Petitioner denied any numbness and tingling. The assessment on this date was “Acute right thumb injury; suspected MP UCL full-thickness tear, right thumb advanced MP primary osteoarthritis.” (PX3).

On April 6, 2024 Petitioner underwent an MRI of the thumb which revealed a partial tear of the ulnar collateral ligament at the base of the proximal phalanx. (PX3, p.416).

Petitioner followed up on May 1, 2024 and examined by Dr. Torosian. The assessment on this date was 4 weeks status post MP UCL partial-thickness tear, right thumb, and advanced MP primary osteoarthritis. Dr. Torosian’s recommendation was to proceed with MP joint fusion surgery. (PX3).

On August 15, 2024, Petitioner underwent a MP joint arthrodesis of the right thumb. The post operative diagnosis was end stage degenerative joint disease MP joint of the right thumb. (PX4, p.43).

Petitioner returned to Fox Valley Orthopedics on August 26, 2024. He presented for first post-op visit and wound check. Petitioner reported intermittent numbness and tingling in the ring finger that occurred only one day. Petitioner was to begin OT. (PX3, p.365).

Petitioner followed up next with Fox Valley Orthopedics on September 27, 2024. He presented 6 weeks status-post MP joint arthrodesis right thumb. Pain and swelling were noted as mild. Petitioner was in OT and improved ROM again noted. Petitioner denied numbness and tingling. Petitioner noted no other concerns. (PX3, p.299).

On October 31, 2024 in physical therapy, Petitioner reported numbness in his fingers every day when he wakes up. Once he moves around it gets better. (PX3, p.220).

Petitioner returned to Fox Valley Orthopedics on November 20, 2024. On this date Petitioner reported he was experiencing numbness in his thumb in the mornings when he wakes up. Examination of the right wrist revealed well-healed surgical incision over the thumb MCP; Tinel's at carpal tunnel negative; Guyon's canal negative, Phalen test negative and median nerve compression test negative. The assessment included right carpal tunnel syndrome. Petitioner was recommended an EMG. (PX3, p.181).

Petitioner returned to Dr. Torosian on November 27, 2024. Petitioner was following up one week for his right carpal tunnel syndrome and 14.5 week post MP joint arthrodesis of the right thumb. Petitioner was recommended activity modification and observation. Petitioner was to return in six weeks. (PX3, 158-161).

In a December 3, 2024 therapy note, Petitioner noted he was going to undergo an EMG for his numbness and tingling. (PX3, p.156).

On December 16, 2024 Petitioner underwent an EMG/NCS of the right upper extremity which revealed neurophysiologic evidence of moderate median nerve dysfunction at the right wrist. Petitioner was diagnosed with carpal tunnel syndrome. (PX3, p.141).

In a December 18, 2024 follow up with Dr. Torosian, Petitioner presented for a four week follow up for his carpal tunnel syndrome. Petitioner reported he was having difficulties with ADLs and again reported intermittent numbness and tingling in the morning; that after the August 2024 arthrodesis he began noticing symptoms of numbness and tingling. Petitioner reported most of the numbness and tingling resolved since wearing a cock-up wrist splint at night. Petitioner was diagnosed with carpal tunnel syndrome of the right wrist and CMC joint osteoarthritis of right thumb. Dr. Torosian recommended Petitioner proceed with a right carpal tunnel release. (PX3, p.129-132).

On March 12, 2025 Petitioner returned to Dr. Torosian. Petitioner reported left CMC joint pain since April 2024 and constant pain in the right MP joint. He also reported intermittent numbness and tingling, particularly in the morning. Dr. Torosian noted the EMG confirmed right carpal tunnel syndrome. The doctor diagnosed Petitioner with carpal tunnel syndrome of the right wrist, CMC joint osteoarthritis of the right thumb and advanced end stage osteoarthritis of the CMC joint left thumb. Petitioner was recommended carpal tunnel. It was noted Petitioner may need hardware removal, but it was currently not symptomatic. (PX3, p.125-129).

Petitioner followed up on June 18, 2025 with Dr. Craig Torosian. Petitioner was three-month post electrodiagnostic confirmed carpal tunnel syndrome. Petitioner was doing well since his MP joint arthrodesis. He was a candidate for a carpal tunnel release. Dr. Torosian was going to allow him more time to recover following the arthrodesis and was to follow up in August. The doctor cautioned Petitioner about overuse and activities. Petitioner was diagnosed with carpal tunnel syndrome and pain in his finger. He was to return to the office as needed. (PX3, p.121-124).

Medical Testimony of Dr. Craig Torosian

The parties proceeded with the evidence deposition of Dr. Craig Torosian on March 14, 2025. (PX1). Dr. Torosian is a board-certified orthopedic surgeon focusing on the hand and upper extremity. *Id.* at 5. Dr. Torosian first saw Petitioner on April 5, 2024 when he was complaining of right thumb pain after a pop in the right thumb while he was striking a mallet against something at work. The examination revealed an acute right thumb injury with a ligament tear and advanced osteoarthritis of the metacarpophalangeal joint (MCP). *Id.* at 7. Dr. Torosian performed surgery on August 15, 2024 in the form of a MCP joint arthrodesis to stabilize the joint. Surgery went well but the recovery was arduous but normal for that procedure. Petitioner was immobilized in a splint for several weeks and had occupational therapy. *Id.* at 8. In respect to the first diagnosis, Petitioner was not able to work full duty and still had restrictions as of March 12, 2025 deposition. *Id.* at 9-10. Dr. Torosian noted if he would give patient restrictions they would be in his notes. *Id.* at 11. Dr. Torosian causally related the MCP injury and surgery to the work accident. *Id.* at 11-12. He opined Petitioner was not having trouble with his thumb prior to the injury. He had a traumatic injury that aggravated his preexisting arthritis. *Id.* at 12.

Dr. Torosian opined Petitioner was diagnosed with carpal tunnel in the right hand as well based on an EMG. (PX1, p.13). Dr. Torosian opined most cases of carpal tunnel are idiopathic which means they do not know what causes it. One of the common causes is from trauma. He indicated it was a combination of his accident at work and the surgery he performed. *Id.* at 14. He noted both would result in swelling, taking up space in the carpal canal. He further noted it was common to have symptoms of carpal tunnel syndrome following either trauma or surgery. *Id.* at 15. Dr. Torosian indicated they would consider surgery when he takes the plate out at the same time. *Id.* at 15.

On Cross Examination, Dr. Torosian noted he was not sure if he examined Petitioner in April 2024. (PX1, p.21). He noted he works as a team with his physician assistant but would not recall whether he was present. *Id.* at 22.

Dr. Torosian admitted that between the initial examination in May and through September 30, Petitioner did not report any symptoms or complaints related to the right index finger, right middle or right ring fingers. Dr. Torosian admitted that he did not document any abnormal findings as to the right index, middle or ring fingers during that time. (PX1, p 30-33). Dr. Torosian noted the first time Petitioner noted carpal tunnel syndrome was in the November 20, 2024 note about seven and half months after the initial injury. *Id.* at 34. Dr. Torosian noted Petitioner did not provide a history as to the onset of the carpal tunnel symptoms. *Id.* at 35. He noted this was three months after the surgery. *Id.* at 37.

Dr. Torosian noted the November 20, 2024 exam revealed thumb adductor strength weakness which is a sign of carpal tunnel syndrome. He had tingling in the fingertips of the median distribution.

The intrinsic atrophy at the thumb was also a sign of CTS. The Tinel's test, Phalen's test and median compression tests were negative at that visit. (PX1 p.39-41).

The December 17, 2024 therapy discharge note indicated Petitioner was wearing a splint at night which helped reduce the numbness and tingling, he could better use his right hand for light household tasks, he was feeling stronger and had less pain in the right hand. Dr. Torosian agreed he was reporting improvement in terms of the right hand. (PX1 p.44-45).

In regards to carpal tunnel syndrome, Dr. Torosian agreed that diabetes is a comorbidity to developing carpal tunnel syndrome. (PX1, p. 53). Dr. Torosian indicated he did not have an opinion on whether diabetes could be a causative factor in the development of Petitioner's carpal tunnel. *Id.* at 53. Dr. Torosian didn't have an opinion of the gap in symptoms. *Id.* at 55.

Dr. Torosian reiterated that most case of carpal tunnel syndrome are idiopathic in nature meaning they do not know what causes them. However, one most commonly known causes of carpal tunnel syndrome is trauma. Surgery is a form of trauma. Trauma causes swelling. (PX1, p.57). The time it takes for the CTS symptoms to appear following the surgery vary upon different factors, but the timing of Petitioner's appearance of the symptoms was within a reasonable time to attribute the CTS to the injury and surgery. *Id.* at 59.

On redirect, Dr. Torosian was shown the October 31, 2024 therapy note, indicating that swelling was occurring at night and going away as he moved the joint in the hand. Dr. Torosian noted that was an indication of carpal tunnel syndrome. This note supported Torosian's causation analysis for Petitioner's carpal tunnel syndrome. (PX1 p.61-62).

Dr. Michael Vender's Testimony

The parties proceeded with Dr. Vender's testimony on April 4, 2025. (RX1). Dr. Vender testified he is a board-certified orthopedic surgeon with an added qualification in hand surgery. (RX1 p.5). He testified that he examined Petitioner on January 16, 2025. He took a history from Petitioner indicating he was using a mallet at work and felt a pop in his thumb. Petitioner eventually underwent surgery on August 15, 2024 for a right thumb metacarpophalangeal joint fusion and that during his follow-ups he was having numbness in his hand, only present in the mornings. (RX1, p 9-10).

Dr. Vender testified that he completed a physical examination and reviewed x-rays of the right wrist which were normal and x-rays of the thumb which demonstrated a plate and screw fixation across the MP joint, with satisfactory healing of the arthrodesis. (RX1, p.11). Dr. Vender testified that he reviewed medical records and diagnosed Petitioner as status post fusion arthrodesis of the right thumb MP joint and carpal tunnel on the right. He further testified that the carpal tunnel syndrome was not causally related to the April 2, 2024 accident. Dr. Vender reiterated, and consistent with his medical reports, that carpal tunnel syndrome is very common, and Petitioner's diabetes was a major risk factor to development of his carpal tunnel syndrome. He believed the treatment in regards to the right thumb was related to the accident. *Id.* at 14.

Dr. Vender denied that additional treatment was needed for the MP joint, but removal of the plate would be a reasonable option in the future if he needed it. Petitioner currently did not need that surgery. (RX1 p.16)

Dr. Vender testified the right carpal tunnel release would not be causally related to the April 2, 2024 accident; nor did the accident aggravate, exacerbate, or accelerate that condition. Dr. Vender noted that carpal tunnel syndrome is a condition of the wrist and Petitioner's injury was to his thumb only. He testified that there was no connection between the thumb injury and the wrist to cause carpal tunnel syndrome. He further testified that the surgery was specifically to the thumb and no involvement of the wrist, which is the location of the carpal tunnel syndrome (RX1, p 17-18).

Dr. Vender testified traumatic carpal tunnel syndrome can occur in two different ways. It can be acute, that something happens, a crush injury to hand or wrist, and carpal tunnel develops "right away" or that a trauma can cause carpal tunnel to develop more slowly but both scenarios require that something happens to the wrist. (RX1, p 18-19). The most common cause of a traumatic carpal tunnel syndrome are wrist fractures. Dr. Vender testified that based on his review of the medical records and examination and findings, Petitioner did not sustain any injury or trauma to his right medial nerve or right wrist from either the April 4, 2024 accident or subsequent thumb surgery. *Id.* at 20.

Dr. Vender testified Petitioner had reached MMI for the right thumb injury and provided a 5% upper extremity impairment rating. *Id.* at 21-22. Dr. Vender testified he did not believe Petitioner required any limitations. (RX1, p.31).

On Cross-Examination, Dr. Vender indicated he charged \$2400.00 for the deposition, \$1,500 for the first report and up to \$500 for the second report. (RX1 p.32-33).

He noted Petitioner was at MMI but may still need his hardware out. (RX1, p. 34). Dr. Vender was not sure what percentage of diabetics develop carpal tunnel. He noted quite a few of carpal tunnel syndrome sufferers have diabetes. *Id.* at 42. Dr. Vender indicated he did not go through the job activities with Petitioner or with anyone at the employer to verify it was accurate. *Id.* at 47.

Dr. Vender reiterated on Cross-Examination that Petitioner's diabetes was a risk factor to development of carpal tunnel syndrome. Dr. Vender noted it would be reasonable for Petitioner to undergo carpal tunnel release and hardware removal at the same time but that the carpal tunnel surgery would not be related. (RX1, p.61-63).

CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in 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. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

The parties agree that the initial thumb surgery was causally related to the April 2, 2024 accident. The current issue is whether Petitioner's carpal tunnel syndrome is related to the work injury. The Arbitrator finds that it is causally related.

In reviewing the opinions of Drs. Torosian and Vender, the Arbitrator notes that both physicians indicated that carpal tunnel syndrome can be idiopathic. Dr. Torosian, however, also indicated that it can be caused by trauma, in the form of surgery. Dr. Torosian noted the swelling from surgery can take up space in the carpal canal. Dr. Torosian noted the time it takes for the CTS symptoms to appear following the surgery vary upon different factors, but the timing of Petitioner's appearance of the symptoms was within a reasonable time to attribute the CTS to the injury and surgery.

The Arbitrator also finds that the medical records support causation. Petitioner underwent surgery on August 15, 2024. Petitioner returned to a post-op visit on August 26, 2024, and began complaining of numbness and tingling in the ring finger. Petitioner intermittently complained of numbness thereafter. The Arbitrator notes on September 27, 2024, Petitioner had mild pain and swelling. (PX3, p.298). In addition, on October 31, 2024 in therapy Petitioner noticed swelling at night. Dr. Torosian noted that was an indication of carpal tunnel syndrome. Thereafter, Petitioner continued to voice complaints of numbness and pain.

The Arbitrator finds this is in contrast to Dr. Vender's opinion. The Arbitrator finds that Dr. Vender does not address Petitioner's immediate complaints following surgery. As such, the Arbitrator finds the opinions of Dr. Torosian more persuasive.

The Arbitrator finds Petitioner's symptoms began immediately following surgery documented in the first post-op visit. The symptomology follows Dr. Torosian's opinion that the carpal tunnel was caused by a trauma, i.e., the surgery. The Arbitrator notes that diabetes may also be a risk factor for the same. Given the causal analysis by Dr. Torosian and the immediate complaints of numbness following surgery within the medical records, Petitioner has proven a causal relationship between the accident and his carpal tunnel syndrome.

With regard to Issue "J", whether the medical services that were provided to the Petitioner were reasonable and necessary:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In reviewing the medical services provided to Petitioner, the Arbitrator finds Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary.

Section 8(a) of the Act states a Respondent is responsible ... "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury..." A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Given the Arbitrator's finding of causation between Petitioner's April 2, 2024 work accident and his condition of ill-being regarding his right thumb and hand, Respondent is liable for reasonable and necessary medical treatment of the causally related conditions.

The Arbitrator orders Respondent to pay Petitioner directly for the remaining outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid per the stipulation between the parties.

With respect to Issue (L), what temporary benefits and temporary partial disability benefits are in dispute, the Arbitrator finds as follows:

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990).

Petitioner is claiming TTD benefits beginning on April 3, 2024 through April 12, 2025 and June 8, 2025 through August 5, 2025. Petitioner also requested TPD benefits from April 13, 2025 through

June 7, 2025. The Arbitrator finds Petitioner has not recovered from his injuries and has not reached Maximum Medical Improvement.

A review of the medical records show Petitioner was off work beginning on April 3, 2024. Petitioner was off work or placed on light duty restrictions through April 12, 2025. No accommodation was provided by Respondent. The Arbitrator notes the medical note on March 12, 2025, Dr. Torosian released Petitioner to work with 5 lbs. limit on lift/push/pull/twist. As such, TTD benefits are awarded for this period. Respondent provided no accommodative work as Petitioner was terminated as of October 23, 2024. Respondent also cut off TTD based on Dr. Vender's opinions. As such, the Arbitrator awards TTD benefits from April 3, 2024 through April 12, 2025.

Petitioner testified that when Respondent suspended benefits, Petitioner looked for work and eventually found work as a house parent at a disability facility. That work lasted from April 13, 2025 through June 7, 2025. (PX6). Petitioner left that job because the routine household-type tasks were causing his injury to flare, and he did not want to further injure the work-related injuries. Petitioner submitted Petitioner's earnings at the disability facility, for total earnings of \$3612.50 over an 8-week period. Eight weeks of AWW earnings would be \$7,761.92, representing differential of \$2,766.28 ($7761.92 - 3612.50 \times 2/3$). Respondent shall pay TPD in that amount to Ash for the 8-week period.

Petitioner returned to Dr. Torosian on June 18, 2025, when Dr. Torosian placed Petitioner on restrictions of 10 lbs. lift/push/pull/twist. (PX3 p.451). Petitioner resumed search for work but had not started working a different job before the hearing. As such, the Arbitrator awards TTD benefits from June 8, 2025 through August 5, 2025. Respondent shall receive credit for amounts paid.

With respect to Issue (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds the follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. Regarding the issue of whether Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference, it is found Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached MMI. Petitioner seeks prospective care in the hardware removal and a carpal tunnel release proposed by Dr. Torosian. The Arbitrator finds Petitioner is entitled to this prospective medical care.

The Arbitrator finds Petitioner is entitled to prospective medical care as recommended by his treating physicians. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC011732
Case Name	Silas Ambrocio v. Labor Personnel, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0173
Number of Pages of Decision	28
Decision Issued By	Amylee Simonovich, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Jason P Carroll
Respondent Attorney	Daniel Wellner

DATE FILED: 6/4/2026

/s/ Amylee Simonovich, Commissioner

Signature

DISSENT

/s/ Amylee Simonovich, Commissioner

Signature

25 WC 11732

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

SILAS AMBROCIO,

Petitioner,

vs.

NO: 25 WC 11732

LABOR PERSONNEL, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 24, 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

25 WC 11732

Page 2

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 \$47,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 4, 2026

O: 05/19/26

AHS/ps

051

/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Stephen J. Mathis

Stephen J. Mathis

PARTIAL CONCURRENCE AND DISSENT

I respectfully dissent from the opinion of the majority and would find the Respondent liable for penalties under Sections 19(l), 19(k), and attorney's fees under Section 16 of the Act. I find *McDonald's v. Illinois Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, and the recent case of *Ramirez v. Illinois Workers' Comp. Comm'n*, 2025 IL App (1st) 242467WC, instructive. Respondent failed to introduce evidence showing that they responded to requests for benefits, Respondent failed to comply with Commission Rules, and Respondent's defenses were frivolous and did not present real controversy and I would award both the mandatory late fee and penalties and fees. I otherwise agree with the majority and would also affirm and adopt all else. For this reason, I concur in part and dissent in part.

I would adopt the Arbitrator's findings of fact. However, I would modify the Arbitrator's credibility finding. I note that the Arbitrator found Ms. Anicua and Ms. Kalas not persuasive, and found Ms. Kalas to be not credible. I view the evidence differently and would find Ms. Anicua was also not credible as her testimony was contradicted by Respondent's own documentary exhibits. Ms. Anicua testified that her final conversation with Petitioner was on April 28, 2025, and Petitioner resigned prior to reporting to the medical clinic or receiving restrictions. She specifically denied having spoken with Petitioner again after that date. Tx. 84 – 85. On the contrary, Respondent introduced a "snipped" copy of Ms. Anicua's contemporaneous notes of a call on April 29, 2025, in which she recorded speaking with Petitioner in the morning after his

25 WC 11732

Page 3

visit at the clinic and that he requested accommodation at that time. RX 7. For this reason, I would find Ms. Anicua's testimony to also be self-serving and not credible.

Section 19(l) provides for additional compensation to an employee in the event of a delay in payment of benefits.

“(l) If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.” 820 ILCS 305/19(l).

The additional compensation is in the nature of a late fee and is mandatory if a benefit payment is late, for whatever reason, and the respondent cannot show adequate justification for the delay. *Ramirez v. Illinois Workers' Comp. Comm'n*, 2025 IL App (1st) 242467WC, ¶ 27, quoting *McMahan v. Industrial Comm'n (Farmer's Elevator)*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998). When a respondent delays or denies benefits, the employer bears the burden of showing that it had a reasonable belief that the delay was justified. *Lester v. Industrial Comm'n*, 256 Ill. App. 3d 520, 524, 628 N.E.2d 191, 194 (1993). “If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory.” *McMahan*, at 515.

Section 19(k) penalties and Section 16 attorney fees address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. *Zitzka v. Industrial Comm'n*, 328 Ill. App. 3d 844, 849 (2002). Section 19(k) provides:

“(k) In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay.” 820 ILCS 305/19(k).

Section 16 provides:

“Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.” 820 ILCS 305/16.

The award of Section 19(k) penalties and Section 16 attorney fees is discretionary, rather than mandatory, and requires a higher standard than Section 19(l) penalties. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 43; *McMahan*, 183 Ill. 2d at 514-15. While the burden of rebutting §19(l) benefits is on the employer, the burden of proving entitlement to Sections 16 and 19(k) penalties remains on the employee. *Midwest v. Illinois Workers' Comp. Comm'n*, 2026 IL App (1st) 242493WC, ¶ 31.

However, the award of Section 19(k) penalties and Section 16 attorney fees is also warranted when an employer takes a position which is contrary to the facts or law known to it. See *McDonald's v. Illinois Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, ¶ 62. In that claim the decision was found to have appropriately awarded additional compensation and attorney fees because the employer disputed accident and notice without real controversy. The employer's obligation to raise a defense which is “well grounded in fact” and warranted by “good-faith argument” was emphasized by the Appellate Court in that case, and failure to comply with that obligation was grounds for the Commission to award Section 19(k) penalties and Section 16 attorney fees.

Finally, Section 9020.80 of the of the Rules Governing Practice before the Commission requires a response to a Petition under Section 19(b) of the Act within 15 days and provides that a failure to respond may result in attorney's fees under Section 16. Section 9110.70 requires that an employer must provide a written response to a request for TTD benefits within 14 calendar days of a demand and then requires the Commission to consider the failure to make such a response in adjudicating a petition under Sections 16 and 19(l). 50 Ill. Adm. Code 9020.80 a(3) and 9110.70, a, b, and e.

Petitioner introduced emails dated May 30, June 2, June 6, and July 21, 2025, providing work notes and making a written demand for payment of benefits. PX 9. The email of May 30 attaches and references the work status note of May 2, 2025, in which Dr. Salehi placed Petitioner off work, and the work status note of May 19, 2025, in which Dr. Salehi returns Petitioner to work with work restrictions including a 10lb lifting restriction. PX 2, 9. The emails of June 2 and June 6 forward those work status notes and the May 27, 2025, work status note of Dr. Bayran. The

25 WC 11732

Page 5

email of July 21, 2024, attaches and references the work status note of July 21, 2025, in which Dr. Salehi continues the prior work restriction. Petitioner's demands were for TTD for the off work period from May 2 to May 19 and for TTD for the unaccommodated period thereafter.

As a consequence of Petitioner's written demand for payment of benefits, the burden of proving a reasonable belief that denial was justified is on Respondent. No written response was introduced by Respondent showing that they responded to Petitioner or his counsel in writing. No testimony indicated that they had issued a written response to Petitioner. Respondent failed in their obligation to provide a written response under §19(l) and Rule 9110.70.

Similarly, I have reviewed the Commission's official file and find that while Petitioner requested to proceed to trial on a Petition for Immediate Hearing, no response was filed by Respondent to the Petition or to a Petition for Penalties, Fees, and Costs.

The only credible evidence Respondent introduced as to their reason to deny was RX 7, the email reporting the injury to their carrier. In that email Ms. Kalas states: "In my [line break] opinion, this is not work-related and is a result of the vehicle accident." Petitioner introduced the records of ATI, which show that Lisa Perez, senior claims examiner, stated her concern that Petitioner had had an MVA "right before" this injury. PX 7.

Neither Ms. Kalas nor Ms. Perez were shown to have the credentials necessary to make this medical determination. When the determination was later made by their Section 12 examiner, Dr. Matteini found Petitioner was injured and was in need of work restrictions as of her examination on July 21, 2025, as supported by the physical therapy record of July 3, 2025. Dr. Matteini did not contradict the May 2 through May 19 off work period.

The Arbitrator found Respondent's allegation that Petitioner resigned was not supported by persuasive testimony, and I find it was not supported by credible testimony, and all witnesses agreed Petitioner refused to sign a resignation form. Respondent failed to show adequate justification for its delay, and the award of the statutory late fee is mandatory. I would award Petitioner the mandatory statutory late fee under §19(l).

Furthermore, no valid legal defense was raised by Respondent. The initial cause to deny, recorded in RX 7, was the medical opinion of Ms. Kalas that the cause of injury was the prior motor vehicle accident and suspicion of taking advantage of prior injury. Kalas was not shown to have sufficient credentials to make such a determination, and I would cite the same language as *Ramirez*: "An honest, though flawed, belief is not enough to escape liability." *Ramirez v. Illinois Workers' Comp. Comm'n*, 2025 IL App (1st) 242467WC at ¶ 29 (quoting *Lenny Szarek, Inc. v. Illinois Workers' Comp. Comm'n*, 396 Ill. App. 3d 597, 612, 919 N.E.2d 43, 335 Ill. Dec. 522 (2009)).

Respondent disputed all causal connection and all bills before the Arbitrator on the basis of causation despite their Section 12 examiner finding some treatment causally related and

25 WC 11732

Page 6

necessary. Respondent made no concession in their Statement of Exceptions and Supporting Brief to the opinions of their Section 12 examiner. This dispute was not warranted by good-faith argument.

Finally, Respondent's own arguments regarding TTD contradict the case law cited in their brief. In the Supporting Brief to their Statement of Exceptions, Respondent argued that their decision to withhold TTD from an employee who has resigned was consistent with *Sharwarko v. Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 131733WC (2015):

"Respondent rightfully denied benefits as Petitioner resigned when light duty could have been accommodated. See, Sharwarko v. Illinois Workers' Compensation Com'n, 2015 IL App (1st) 131733WC (2015). In Sharwarko, the court found the employer properly denied temporary total disability when an employee voluntarily retired prior to reaching maximum medical improvement." Respondent's Statement of Exceptions and Supporting Brief, page 16.

In *Sharwarko*, the employee was offered and accepted an early retirement package. When he was on light duty restrictions which the employer could have accommodated, the Commission and the Court found he was not owed TTD. The Court stated:

"We believe, as did the Commission, that when work for an injured employee falling within his medical restrictions is available, the employee's voluntary retirement is the equivalent to a refusal to work within those restrictions, authorizing the termination of TTD benefits before the employee has reached MMI." *Id.* at ¶49.

Regarding periods when the employee would have been fully restricted the Court highlighted that employee could have been owed that period, but failed in his burden of proof:

"Just as the Commission, we are not unmindful that the claimant would have been off of work for some period of time following his second surgery for purely medical reasons. However, by failing to introduce any of Dr. Tulipan's post-operative records in evidence, or any other medical records authorizing the claimant to remain off of work following his second surgery, the claimant failed to meet his burden to prove the period of time following his second surgery when he could not work even within his restrictions." *Id.* at ¶50.

Sharwarko, therefore, explicitly holds that Respondent should have paid TTD for Petitioner while he was off work, not for the proposition that no TTD is owed an employee that resigns, and Respondent was unreasonable in withholding all TTD under their own citation.

Medical records were introduced that Petitioner was off work from May 2 – May 19 based on an off-work restriction of Dr. Salehi. Petitioner sent a demand for TTD based on this period and these restrictions on May 30, 2025. PX 9. Respondent's §12 did not contradict that restriction.

25 WC 11732

Page 7

Pursuant to *Sharwarko*, Petitioner was owed that TTD and Respondent's citation is not warranted by good-faith argument.

For the above reasons, I would have awarded the mandatory late fee under Section 19((l)) as Respondent failed to meet its burden of proof that it had a reasonable belief its delay was justified. I would separately find Respondent has failed to comply with the requirement to raise defenses well-grounded in fact and warranted by good-faith argument and I would award further penalties and attorneys fees consistent with Sections 19(k) and 16.

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

June 4, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC011732
Case Name	Silas Ambrocio v. Labor Personnel, LLC
Consolidated Cases	25WC017418
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Jason P Carroll
Respondent Attorney	Daniel Wellner

DATE FILED: 11/24/2025

/s/ Jacqueline Hickey, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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)

Silas Ambrocio

Employee/Petitioner

v.

Labor Personnel

Employer/Respondent

Case # **25** WC **11732**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **8/28/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/28/25**, 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 **\$50,085.36**; the average weekly wage was **\$963.18**.

On the date of accident, Petitioner was **24** years of age, *single* with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services directly to Petitioner, pursuant to the medical fee schedule, of \$243.86 for medical care provided by and at Physicians Immediate Care, \$13,250.00 for medical care provided by and at Illinois Bone and Spine Institute, \$1,887.60 for medical care provided by and at Ashland Medical Specialists, \$8,395.80 for medical care provided by and at The Pain Center of Illinois, \$1,950.00 for medical care provided by and at Chicago Medical Imaging, \$1,421.00 for medical care provided by and at Chicago Neurospine Surgery, and \$9,472.35 for medical care provided by and at ATI Physical Therapy, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$642.12/week, for 17 3/7 weeks, commencing April 29, 2025, through August 28, 2025, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the recommended lumbar surgery and follow-up care as recommended by Petitioner's treating physician, Dr. Sean Salehi.

Petitioner's Petition for Penalties and Fees is hereby denied. See Rider to Decisions.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SILAS AMBROCIO,

Petitioner,

v.

CASE NO. 25WC011732 & 25WC017418

LABOR PERSONNEL,

Respondent.

RIDER TO DECISIONS

This matter proceeding to hearing on August 28, 2025, in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing pursuant to Section 19(b) and 8(a) of the Act. For case number 25WC011732 (Date of Accident 4/28/25), the issues in dispute include causation, medical bills, temporary total disability, penalties and fees pursuant to sections 19(k), 19(l) and 16 of the Act and prospective medical treatment (lumbar surgery). *See* Arbitrator's Exhibit 1 ("Ax1"). For case number 25WC017418 (Date of Accident 8/31/24), the issues in dispute include causation and medical bills. *See* Ax2. At trial, Silas Ambrocio (hereinafter "Petitioner") testified in Spanish with the assistance of a translator. (T. 12-13). Two decisions are issued for these consolidated cases, however only one Rider to Decisions is included and applies to both decisions.

FINDINGS OF FACT

As of August of 2024, as well as in April of 2025, Petitioner was employed by Labor Personnel (hereinafter "Respondent"). (T. 14-15). He explained that Respondent is an employment agency. (Id. at 15). While working for Respondent, he performed his actual work at Get Fresh Produce in Bartlett, Illinois. (Id. at 15-16). He began working for Respondent approximately four to five years ago. (Id. at 16). Petitioner testified he was a picker in the warehouse at Get Fresh Produce. (T. 16). His job duties included selecting or picking boxes of food for restaurants. (Id.). He explained he took the boxes of food, placed them on a pallet, wrapped the boxes, and sent them out. (Id. at 16-17). These are the same job duties he was performing on August 31, 2024 and on April 28, 2025. (Id. at 18, 23-24).

First Work Accident: August 31, 2024

On August 31, 2024, Petitioner testified he was working in his regular position for Respondent at Get Fresh Produce. (T. 18). He sustained an accident while picking up boxes of rice that weighed approximately forty to fifty pounds. (Id.). Petitioner testified he felt pain in his lower back while lifting one of the boxes of rice. (Id. at 18-19).

Summary of Medical Treatment

That same date, August 31, 2024, Petitioner sought medical treatment at Physicians Immediate Care. (T. 9). At that visit, he complained of left lower back pain after lifting a fifty-pound bag of rice and twisting wrong. (PX1 p. 17). He was advised to use Naproxen and Tylenol for pain. (Id. at 18). He was also given light duty work restrictions, which included avoiding bending and twisting, and no lifting over ten pounds. (Id.).

Petitioner testified he provided these work restrictions to his supervisors at Respondent and at Get Fresh Produce. (T. 19-20). Light duty work was provided. (Id.). Petitioner had two follow-up visits at Physicians Immediate Care on September 7, 2024, and on September 12, 2024. (PX1 p. 31-57). He was released to full duty and at maximum medical improvement at his September 12, 2024, follow-up visit. (Id. at 54). Following his release from medical care, he testified he continued working in his normal position as a picker at Get Fresh Produce through Respondent. (T. 21).

Unrelated Motor Vehicle Accident: October 22, 2024

Petitioner testified he was involved in a motor vehicle crash on October 22, 2024. (T. 21). This accident was unrelated to his work for Respondent. (Id.). He sustained injuries to his lower back in this crash. (Id.). Following this accident, he underwent medical care, which included physical therapy and injections. (Id.). Petitioner testified he did not remember telling his doctors that he had leg pain following this accident. (Id. at 63). He testified he remembers his pain was in the center part of his lower back. (Id. at 64). The medical records following that injury indicate Petitioner reported some radiating pain into his leg, specifically the back of his left thigh. (RX3 p. 12).

During his medical care for the injuries sustained in the crash, he was provided with light duty work restrictions by his medical providers. (T. 22). The restrictions were not accommodated, and Petitioner was off work as a result for several months. (Id.). On January 30, 2025, he was released back to full duty work. (T. 22-23). He returned to work for Respondent at that time. (Id. at 23). He was released from medical care for the injuries sustained in the motor vehicle crash on February 26, 2025. (Id.). He continued working in his full duty capacity for Respondent following his release from medical treatment. (Id.). Petitioner testified he had no issues working for Respondent following his return to work through his second work accident date of April 28, 2025. (Id.).

Second Work Accident: April 28, 2025

On April 28, 2025, Petitioner testified he was working in his regular position for Respondent at Get Fresh Produce. (T. 23-24). He sustained an accident while picking up boxes of chicken as well as some boxes of juice that weighed approximately forty to fifty pounds. (Id. at 24). Petitioner testified he felt a pain in his back while lifting a box of juice up from the floor and onto his pallet jack. (Id.). He explained that a pallet jack is similar to a cart with a two-prong fork, which he used to lift pallets. (Id. at 25)

Petitioner testified he felt pain in his lower left back, which radiated down into his left leg. (Id.). He reported this accident to his supervisor and was referred to Physicians Immediate Care for treatment the same day. (Id. at 25-26).

Summary of Medical Treatment

Upon his arrival at Physicians Immediate Care, the records indicate Petitioner was at work that same day and was loading a pallet with juice when he injured his lower back. (PX1 p. 58). Petitioner complained of lower back pain that radiated down the left side to the leg, extending below the knee and to his toes. (Id. at 59). He reported similar pain in the past, particularly after work, however it was more persistent this time. (Id.). The records also indicate that he engages in heavy lifting, bending, and twisting at work. (Id.).

Petitioner was advised to take anti-inflammatory medication for pain. (PX1 p. 59). He was also provided with work restrictions of avoiding bending, twisting, and heavy lifting. (Id. at 59-60). The diagnoses at this visit included a sprain of ligaments of the lumbar spine and muscle spasm of the back. (Id. at 60). Petitioner provided the light duty work restrictions to his supervisors at Respondent and Get Fresh Foods. (T. 27). He testified that he was not provided with work that accommodated his restrictions and that he was advised by both supervisors that they no longer had work available for him. (Id.).

Petitioner testified he sought follow-up medical treatment with Dr. Sean Salehi at Chicago Neurospine Surgery on May 2, 2025. (T. 28). At this visit, Dr. Salehi noted Petitioner was experiencing low back pain as a result of a work injury on April 28, 2025. (PX2 p. 3). While unloading a shipment, he noted Petitioner bent down to pick up a heavy crate of juice and instantly felt a sharp shooting pain down his low back into his left leg. (Id.).

Petitioner continued to report continuous lower back pain radiating to his left lower extremity with numbness of all toes of the left foot. (T. 3). Dr. Salehi also noted Petitioner had previously experienced low back pain following a motor vehicle accident, for which he was treated with pain injections. (Id.). At this initial visit, Dr. Salehi advised Petitioner to undergo a lumbar MRI. (PX2 p. 4). Once the MRI was completed, he advised Petitioner to return to his office for him to personally review. (Id.). Dr. Salehi advised Petitioner to remain completely off work at that time as well. (Id. at 4-5).

On May 6, 2025, Petitioner underwent the lumbar MRI as recommended by Dr. Salehi at Chicago Medical Imaging. (PX3). He returned to Dr. Salehi's office on May 19, 2025, to review the results. (PX2 p. 7). Petitioner continued to complain of low back pain radiating to his left lower extremity with numbness of all toes of his left foot. (Id.). He also reported weakness in his left leg. (Id.). Petitioner was continuing to use Meloxicam and Lidocaine patches as previously prescribed by Dr. Salehi. (Id.).

Dr. Salehi personally reviewed the May 6, 2025, lumbar spine MRI. (PX2 p. 8). He noted, “Mr. Ambrocio is experiencing low back pain with radiculopathy to his left lower extremity as a result of a work injury from 4/28/2025. His low back pain is secondary to L4-5 and L5-S1 disc bulges with central canal stenosis causally related to his work injury.” (Id.). He recommended physical therapy. (Id.). He also referred Petitioner to pain management for an evaluation and treatment with left-sided L4-5 and L5-S1 transforaminal epidural steroid injections. (Id.).

At this May 19, 2025, visit, Dr. Salehi released Petitioner back to work with restrictions of no lifting, pushing, or pulling over ten pounds, as well as no bending or twisting more than three times per hour, and the need to alternate sitting and standing every thirty to forty minutes. (Id. at 10). These work restrictions were sent to Respondent’s insurance carrier on May 30, 2025, in an email sent by Petitioner’s attorney. (PX9 p. 2). Petitioner testified that light duty work was not provided by Respondent following this visit. (T. p. 29). Petitioner began a course of physical therapy at ATI Physical Therapy on May 21, 2025. (T. p. 29 and PX7 p. 96-99).

Petitioner had his initial visit with pain management physician Dr. Neema Bayran at Pain Centers of Illinois on May 27, 2025. (PX4 p. 3-7). Dr. Bayran noted Petitioner complained of low back pain radiating to his left leg down to his foot and toes. (Id. at 3). He noted Petitioner’s accident at Respondent, however, he incorrectly indicated it occurred on April 27 rather than April 28, 2025. (Id.). He also noted Petitioner’s motor vehicle accident from October of 2024, and confirmed he underwent therapy and injections for the injuries he sustained at that time. (Id.). Dr. Bayran recommended Petitioner continue in physical therapy. (PX4 p. 6). He also recommended he be off work until his next follow-up visit. (Id.). He agreed with Dr. Salehi’s recommendation to proceed with a lumbar transforaminal epidural steroid injection at the left L4-L5 and L5-S1 levels. (Id.). The off-work note from this visit was sent to Respondent’s insurance carrier on June 2, 2025, in an email sent by Petitioner’s attorney. (PX9 p. 3).

Prior to proceeding with the recommended injection, Petitioner returned to Dr. Salehi’s office on June 2, 2025. (PX2 p. 14). Dr. Salehi continued to recommend an epidural injection. (Id. at 15). Petitioner thereafter underwent the injection on June 5, 2025, which was provided by Dr. Bayran at the Illinois Bone & Spine Institute. (PX6).

Following this injection, Petitioner returned to Dr. Bayran’s office on June 17, 2025. (PX4 p. 8-12). Petitioner reported a sixty-percent improvement after the procedure. (Id. at 8). He continued to complain of low back pain radiating to his left leg and ankle. (Id.). While his lower back pain had decreased, Dr. Bayran indicated Petitioner stated that the pain radiating into his left leg was bothering him the most. (Id.). Dr. Bayran advised Petitioner to proceed with a second epidural steroid injection. (Id. at 11).

Petitioner returned to Dr. Bayran's office again on July 15, 2025. (PX4 p. 13-17). Dr. Bayran noted Petitioner had developed acne at the injection site following his first injection, which then began to spread across his body. (Id. at 13). Dr. Bayran recommended Petitioner not proceed with a second injection due to the widespread acne following the first injection. (Id. at 16). He recommended a spinal consultation to determine future treatment plans. (Id.). Petitioner also reported that he developed a rash on his extremities and torso following the injection. (PX2 p. 19). At arbitration, Petitioner testified regarding this rash. (T. 32). Petitioner also showed the courtroom his rash, which the Arbitrator noted to be on his flanks, right and left side of Petitioner's back. The rash went up from his waistband as far as his shirt was pulled up.

Petitioner proceeded with therapy at ATI Physical Therapy throughout June and July of 2025. (See PX7). He also returned to Dr. Salehi's office on July 14, 2025. (PX2 p. 19-20). Dr. Salehi confirmed Petitioner reported some relief of his low back pain following the epidural injection, however, he was "...still having pain into the left lateral leg and calf with ongoing numbness in the toes." (Id. at 19). At the July 14, 2025, visit, Dr. Salehi confirmed Petitioner had ongoing low back pain and left radicular pain as a result of his work accident on April 28, 2025. (PX2 p. 20). He noted, "This is secondary to L4-5 and L5-S1 disc bulges with central canal stenosis causally related to his work injury." (Id.). He advised Petitioner to return to his office in one week and to bring his prior lumbar MRI. (Id.). At that time, Dr. Salehi indicated they would determine whether Petitioner was a surgical candidate. (Id.).

As recommended, Petitioner returned to Dr. Salehi's office one-week later, on July 21, 2025. (PX2 p. 21-23). Due to the severity of his symptoms and lack of response to conservative treatment, Dr. Salehi recommended surgical intervention in the form of a left L4-S1 hemilaminectomy and lateral recess decompression. (PX2 at 22). Petitioner testified he wants to proceed with surgery as recommended by Dr. Salehi. (T. 36-37). Petitioner, through his attorneys, provided work status notes dated May 2, 2025, May 19, 2025, May 27, 2025, and July 21, 2025, to Respondent's attorney in emails sent on June 6, 2025, and July 21, 2025. (PX9 p. 4-5).

Current Condition and Employment

Petitioner testified he has not sustained any other accidents following his April 28, 2025, work accident. (T. 40-41). Throughout his testimony, the Arbitrator noted that Petitioner periodically shifted from sitting in a chair while testifying to standing next to that chair throughout the trial. Petitioner explained he did this because it is difficult for him to be in one specific position. (T. 41). He testified being in one position causes his back and leg to hurt. (Id.). With regard to his employment with Respondent, Petitioner testified that he never resigned from his employment following his April 28, 2025, accident. (T. 41). He testified no one from Respondent has contacted him about returning to work in any capacity following this accident. (Id. at 38). Since that date, he has not returned to work for Respondent or for any other employer. (Id. at 38-39).

Respondent Section 12 Examiner: Dr. Lauren Matteini

At the request of Respondent, Petitioner underwent a Section 12 examination on July 21, 2025, by Dr. Lauren Matteini. (T. 37). Dr. Matteini's initial report was admitted into evidence as Respondent's Exhibit Number One. (RX1). She also drafted an addendum report, which was admitted into evidence as Respondent's Exhibit Number Two. (RX2).

Dr. Matteini indicated Petitioner provided one mechanism of injury regarding his April 28, 2025, accident when she interviewed him and a different mechanism when he provided it to the "pain management doctor." (RX1). Dr. Matteini noted in her report, "...he was moving boxes of juice which were 20-25lb. He lifted the box and twisted to the left, feeling immediate pain." (Id.). The Arbitrator reviewed the initial notes from Petitioner's visit with Dr. Bayran. They state in relevant part, "The patient states that he was lifting heavy boxes from the floor onto a pallet and felt pain in his low back." (See PX4 p. 3). The Arbitrator notes Dr. Matteini provided no further explanation regarding her perceived inconsistency in the histories of accident. Regardless, the Arbitrator notes both histories are similar and not viewed as inconsistent.

Dr. Matteini also indicated Petitioner had "several positive Waddell findings." (RX1). She additionally opined, "Also, he does have evidence of objective lower back pain on examination, however, his subjective complaints of leg pain and numbness do not follow a dermatomal pattern." (Id.). Dr. Matteini noted she did not review any medical records from Dr. Salehi when drafting this initial report. (Id.). Dr. Matteini concluded that Petitioner's current condition of ill-being as it relates to his lower back is unrelated to his August 31, 2024, work accident. (RX1). Additionally, she noted his current condition of ill-being as it relates to his lower back is unrelated to his October 22, 2024, motor vehicle accident. (Id.).

Dr. Matteini concluded that Petitioner's current condition of ill-being as it pertains to his lower back is related to his April 28, 2025, work accident. (RX1). She stated, "He has exacerbation of his underlying degenerative changes, leading to chronic back pain without radiculopathy." (Id.). She determined he has not reached maximum medical improvement as it pertains to his April 28, 2025, work accident. (Id.). She recommended a return to physical therapy three times per week for four weeks followed by a likely need for work conditioning. (Id.). She further indicated that Petitioner could return to work with restrictions of no lifting more than fifteen pounds and no repetitive bending. (Id.). She confirmed that the need for these restrictions is related to the April 28, 2025, accident. (Id.).

In her addendum report dated August 21, 2025, Dr. Matteini noted she was provided with additional medical records, including the MRI and records from Dr. Salehi's office. (RX2). She noted the mechanism of injury contained in Dr. Salehi's records differed from that provided to her and that contained in Dr. Bayran's records. (Id.).

The Arbitrator notes that the history of the April 28, 2025, accident contained in Dr. Salehi's notes indicated, "...while unloading a shipment, he bent down to picking up a heavy crate of juice, he then instantly felt a sharp shooting pain down his low back to his left leg." The Arbitrator nonetheless notes all three histories are similar and not inconsistent to the point to deem petitioner unreliable or not credible.

Dr. Matteini also opined that the lumbar MRI of May 6, 2025, was taken prematurely and therefore was not necessary. (RX2). She also agreed with not pursuing a second epidural steroid injection. (Id.). Instead, she recommended additional therapy. (Id.). The Arbitrator notes Petitioner performed physical therapy from May 21, 2025, through July 30, 2025. (See PX7). At his July 30, 2025, visit to ATI Physical Therapy visit, it was noted, "Silas attended 18 PT sessions...his progress has been stalled with high pain levels and radicular symptoms...This has not allowed him to progress further and it has been recommended to continue with HEP while pending next steps that his physician recommends and pending insurance." (Id. at 35). He was discharged from therapy at that time due to the lack of progress. (Id.).

Testimony of Respondent Witness: Silvia Anicua

Silvia Anicua was called to testify by Respondent. (T. 73). She testified she is currently employed by Respondent Labor Personnel. (Id.). She is an onsite manager, specifically a recruiting manager. (Id. at 74). As a recruiting manager, she explained her job duties include assigning employees to one of several companies depending on the needs of those individual companies. (Id.). Ms. Anicua testified she is familiar with Petitioner and with his two work accidents at issue in these claims. (T. 75-76, 83). She was also aware of his unrelated motor vehicle crash in October of 2024. (Id. at 78). In regards to his April 28, 2025, work accident, Ms. Anicua testified that Petitioner called her to report his injuries. (Id. at 83). Petitioner requested he be placed in a lighter position following this accident, specifically a forklift driver. (Id. at 84). Ms. Anicua testified that a forklift driver position required heavy lifting, and regardless, was not available to Petitioner at that time. (Id.).

After she advised him that the forklift driver position was not available, Ms. Anicua testified Petitioner told her he was resigning from his employment. (T. 85). She indicated he was not going to go back to his job as a picker because he did not want to continue injuring himself. (Id.). Ms. Anicua indicated Petitioner was no longer an employee following this conversation. (Id. at 86). On cross-examination, Ms. Anicua testified that Petitioner refused to sign a resignation letter when provided it by his supervisor. (T. 88). She confirmed that no light duty work was offered to Petitioner following his April 28, 2025, work accident. (Id. at 88-89). She explained that Respondent's employees are provided light duty work by the companies they were working for when injured. (Id. at 89). In this case, Petitioner was injured while working at Get Fresh Produce. (T. 15). Ms. Anicua testified Get Fresh Produce has light duty work in their herbs department. (Id. at 89). She confirmed that the herb position was never offered to Petitioner following his accident. (Id.).

Testimony of Respondent Witness: Emiloy Kalas

Emiloy Kalas was called to testify by Respondent. (T. 91). She testified she is currently employed by Respondent Labor Personnel. (Id. at 92). She is a workers' compensation manager for Respondent. (Id.). As a workers' compensation manager, she explained her job duties include collecting information such as medical records and sending it to their insurance company. (Id. at 93). Ms. Kalas testified she is aware of Petitioner and his work accident claim of April 28, 2025. (T. 93-95). After this injury, she testified she handled the paperwork associated with his claim and communicated with their insurance carrier. (Id. at 95). She testified she wrote and sent an email on May 6, 2025, to Myrta Lewis regarding this accident. (Id. at 96, 101). This email was admitted into evidence as Respondent's Exhibit Number Seven. (RX7). This email stated in part, "Silas called me this morning to discuss his current position at Get Fresh..." (Id.). Ms. Kalas testified that she wrote this email. (T. 101). She also testified that she never spoke to Petitioner about his April 28, 2025, accident. (Id. at 98, 101).

When asked, "Did he (Petitioner) never speak to you about the accident, or did he speak to you, as you said in this email?" Ms. Kalas replied, "Yeah." (T. 102). When asked to explain the discrepancy, Ms. Kalas testified that she took, "...this note from the portal we have...so I just copy, you know, that information." (Id.). Ms. Kalas confirmed on cross-examination that Petitioner asked for a lighter job after his accident of April 28, 2025. (T. 105-106). She testified the only job offered to him was his original picker position. (Id. at 106). She confirmed Petitioner refused to sign a resignation letter given to him by Respondent. (Id. at 109).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The cases 25WC17418 and 25WC11732 are consolidated and were tried together. However, two separate decisions are issued and there are separate Conclusions of Law. See 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 Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief.

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner came across as a hard-working individual who requested to go back to a lighter duty job despite his injuries, but it was unavailable and/or not offered. Despite the Section 12 Examiner opining to positive Waddell findings, the Arbitrator notes that none of the physicians who treated him noted any symptom magnification.

However, the Arbitrator notes that Petitioner's testimony did not correlate fully with the contemporaneous medical records in one aspect. Specifically, Petitioner testified his pain following his August 31, 2024, work accident was in the center of his lower back and off to the right. He indicated he had no leg pain at that time. Following his October 22, 2024, motor vehicle accident, he testified he had no leg pain again but was more towards the right side of his lower back. He did not remember telling Dr. Rakic that he was having radiating leg pain in December of 2024, prior to the second work accident. The Arbitrator notes that the contemporaneous medical records indicate Petitioner did in fact report complaints of pain radiating to the left leg. This does not, however, appear to be an attempt at intentional deception on Petitioner's part but the Arbitrator attributes it to petitioner being a poor historian. Overall, his testimony was generally supported by the medical records and other evidence. Further, his medical history was well known to the medical providers in this claim, including IME Dr. Matteini, who concluded Petitioner's current low back condition was causally related to his April 28, 2025, accident as an exacerbation of his underlying degenerative spine condition. This discrepancy in the testimony and records, does not affect on the overall outcome of these claims nor deem the petitioner unreliable.

Overall, the Arbitrator finds Petitioner's testimony to be mostly straight forward and truthful, and generally consistent with the records as a whole, outside of the discrepancy mentioned above. Further, the Arbitrator notes that petitioner complained of radicular symptoms into the left leg and thigh previously, following the unrelated auto accident and then later, more extensive radiculopathy down to his toes following the 4/28/25 work accident. Despite petitioner not remembering what he previously told some of the doctors during treatment for prior injuries, it is clear there is a change and increase in reported symptoms. In sum, Petitioner 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 also finds the treating physicians to be more credible and persuasive than the IME as it pertains to causation for petitioner's lumbar spine condition. See Conclusions of Law below for further discussion.

The Arbitrator gives little weight to the opinions of Ms. Anicua and Ms. Kalas, who were not persuasive and further finds Ms. Kalas to not be credible in her testimony or explanations. Overall, Respondent witnesses' testimony and exhibits, for reasons stated below, did not persuade the Arbitrator.

In regard to Respondent's witness Silvia Anicua, the Arbitrator finds her testimony to not be persuasive. Ms. Anicua appeared quick to testify that Petitioner immediately resigned from his employment following his April 28, 2025, accident. However, when questioned regarding this assertion, her testimony seemed to change. In the end, Ms. Anicua agreed that Petitioner refused to sign a resignation letter. She also eventually agreed that no light duty position was ever available or offered to him. These conclusions were in contrast to her original positions.

Finally, in regard to Respondent's second witness Emiloy Kalas, the Arbitrator finds her testimony to be lacking in credibility. Ms. Kalas testified regarding certain facts which she later acknowledged were incorrect. Specifically, she testified that she never spoke to Petitioner following his accident on April 28, 2025 even though she testified it was her job to investigate his claim. She also indicated she wrote an email that stated in relevant part, "Silas called me this morning to discuss his current position at Get Fresh." When cross examined, she admitted that she did not actually write this portion of the email and she never spoke to petitioner herself. She copied and pasted it from a portal and believed this portion to be from Silvia. It appears this witness has no firsthand knowledge of what occurred in this matter. Her information all came from Silvia or potentially other unknown sources like a portal. The Arbitrator does not rely on on her testimony and is not persuaded.

Case Number: 25WC011732 (DOA: 4/28/25)

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

To prevail on a claim for benefits under the Act, an employee must establish, among other things, that his or her current condition of ill-being is causally connected to a work-related injury. *Elgin Board of Education School Dist. U-46 v. Illinois Workers' Comp. Comm'n*, 409 Ill.App.3d 943, 948 (2011). 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. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003). Even if the claimant had a preexisting degenerative condition which made him or her more vulnerable to injury, recovery for an accidental injury will not be denied as long as he or she can show that his or her employment was also a causative factor. *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." *Int'l Harvester v. Indus. Comm'n.*, 93 Ill. 2d 59, 63 (1982).

In regard to causal connection, the Arbitrator notes petitioner's complaints have remained consistent dating back to his first visit to Physicians Immediate Care on the same day he sustained injuries, 4/28/25. Those records indicate Petitioner was at work that same day and was loading a pallet with juice when he injured his lower back. He complained of lower back pain that radiated down the left leg, extending to his toes.

On May 6, 2025, Dr. Sean Salehi stated, “Mr. Ambrocio is experiencing low back pain with radiculopathy to his left lower extremity as a result of a work injury from 4/28/2025. His low back pain is secondary to L4-5 and L5-S1 disc bulges with central canal stenosis causally related to his work injury.” Due to the severity of his symptoms and lack of response to conservative treatment, Dr. Salehi eventually recommended surgical intervention in the form of a left L4-S1 hemilaminectomy and lateral recess decompression. (PX2 at 22). Petitioner testified he wants to proceed with surgery as recommended by Dr. Salehi. (T. 36-37).

Further, Respondent’s expert, Dr. Lauren Matteini, was asked specifically, “Is his current condition of ill-being caused or aggravated by the alleged work injury on April 28, 2025?” She responded directly, “Yes. He has exacerbation of his underlying degenerative changes, leading to chronic back pain without radiculopathy.” (RX1&2) Dr. Matteini also reviewed the medical records from Petitioner’s August 31, 2024 work accident and the October 22, 2024, unrelated motor vehicle accident. She specifically excluded those two accidents as being a cause of Petitioner’s current condition of ill-being of his lower back, despite disagreeing with the extent of the diagnosis and need for additional medical care.

The medical evidence and the testimony support a finding that Petitioner’s current condition of ill-being as it relates to his lower back is related to his April 28, 2025, work accident. At a minimum, the doctors for both parties agree that there is at least an exacerbation to petitioner’s lumbar spine, among other diagnoses per Dr. Salehi. The Arbitrator is persuaded by the treating physicians medical records and opinions, specifically Dr. Salehi, as to the extent of petitioner’s lumbar spine injury and condition.

For these reasons, the Arbitrator finds that Petitioner’s condition of ill-being as it pertains to his lower back is causally related to his work accident of April 28, 2025.

Regarding Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

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. Indus. Comm’n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds that medical services provided to Petitioner have been reasonable and necessary. Respondent has not paid all appropriate charges. The Arbitrator has already found that Petitioner’s condition of ill-being as it pertains to his lower back is related to his work accident of April 28, 2025. Therefore, the remaining issue to be addressed is whether the treatment has been reasonable and necessary.

Respondent's disputes the outstanding medical bills per their IME. In regards to physical therapy, Respondent's expert, Dr. Matteini, stated in her addendum report, "...I will note that any PT post injury on 4/28/25 is reasonable and necessary." (RX1&2) She stated she was unable to render an opinion regarding the lumbar injection because she was not provided with the lumbar MRI imaging. In that same paragraph, however, Dr. Matteini stated the MRI was completed prematurely. She also stated it was reasonable to attempt a second injection. However, she agreed it was not recommended due to the rash Petitioner developed after the first epidural. In regards to the medical treatment Petitioner received thus far, the Arbitrator instead relies on the opinions and recommendations of Dr. Salehi and the other treating physicians who appear to have a better understanding of petitioner's condition and ongoing issues, to find that the medical treatment is reasonable, necessary and related. Petitioner has undergone physical therapy and injections to date and has now been recommended for lumbar spine surgery.

For these reasons, Respondent shall pay reasonable and necessary medical services directly to Petitioner, pursuant to the medical fee schedule, of \$243.86 for medical care provided by and at Physicians Immediate Care, \$13,250.00 for medical care provided by and at Illinois Bone and Spine Institute, \$1,887.60 for medical care provided by and at Ashland Medical Specialists, \$8,395.80 for medical care provided by and at The Pain Center of Illinois, \$1,950.00 for medical care provided by and at Chicago Medical Imaging, \$1,421.00 for medical care provided by and at Chicago Neurospine Surgery, and \$9,472.35 for medical care provided by and at ATI Physical Therapy, as provided in Sections 8(a) and 8.2 of the Act.

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

The Arbitrator finds that the Respondent shall authorize surgical intervention in the form of a left L4-S1 hemilaminectomy and lateral recess decompression, as recommended by Dr. Sean Salehi, as well as related post operative care.

The Arbitrator has already found that the Petitioner's current condition of ill-being as it relates to his lower back is causally related to his work accident of April 28, 2025. Petitioner's treating physicians, Drs. Salehi and Bayran, and the Respondent's Section 12 examiner, Dr. Matteini, all agree that Petitioner needs additional treatment for his lower back injuries. However, Dr. Matteini does not believe Petitioner requires surgery.

At his July 14, 2025, visit, Dr. Salehi noted Petitioner had ongoing low back pain and left radicular pain as a result of his work accident on April 28, 2025. He noted, "This is secondary to L4-5 and L5-S1 disc bulges with central canal stenosis causally related to his work injury." Petitioner returned to Dr. Salehi's office on July 21, 2025. At this visit, Dr. Salehi recommended surgical intervention in the form of a left L4-S1 hemilaminectomy and lateral recess decompression. Petitioner testified he wants to proceed with surgery as recommended by Dr. Salehi.

Respondent's Section 12 examiner Dr. Matteini recommended additional therapy in her initial report of July 21, 2025. However, she made this recommendation without having a complete understanding of Petitioner's medical treatment. Specifically, she was not provided with and did not review Dr. Salehi's medical records before drafting this report. Following her receipt of additional records, she did not appear to readdress the need for further care in her August 21, 2025 addendum report and did not add an addendum section to Question 8) regarding petitioner's current medical status and whether he requires additional treatment. The response remains the same from the prior report: "Mr. Ambrocio was at MMI for the 8/31/24 injury following his follow up dated 9/12/24. He is currently experiencing temporary exacerbation of his chronic lower back after 4/28/25 work injury and has not yet met MMI from this injury. He is in need of further treatment including physical therapy 3x per week for 4 weeks, with a likely need for work conditioning and more regular home exercise program, considering his several recurrences at his workplace." (Rx2, p. 14).

In regards to the recommendation of Dr. Matteini for Petitioner to proceed with additional therapy, the Arbitrator notes that at his July 30, 2025, visit to ATI Physical Therapy visit, it was stated, "Silas attended 18 PT sessions...his progress has been stalled with high pain levels and radicular symptoms...This has not allowed him to progress further..." He was discharged from therapy at that time. Dr. Matteini's recommendation for additional therapy is in direct contradiction to Petitioner's own therapist and his own surgeon and does not seem reasonable. Dr. Matteini's opinions are less persuasive than those of Dr. Salehi. Dr. Salehi has a complete understanding of Petitioner's injury and treatment history. For these reasons, the Arbitrator adopts the opinions and findings of Dr. Salehi and awards treatment in line with what Dr. Salehi has recommended.

Therefore, the Arbitrator finds that Respondent shall authorize surgical intervention in the form of a left L4-S1 hemilaminectomy and lateral recess decompression, as recommended by Dr. Salehi.

Regarding Issue L, what temporary benefits are in dispute, the Arbitrator finds as follows:

Petitioner claims to be entitled to temporary total disability benefits from April 29, 2025, through August 28, 2025, which represents a period of 17 3/7 weeks. Respondent disputes the entire period. A claimant is temporarily totally disabled from the time an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010).

Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). Here, Petitioner sustained injuries on April 28, 2025, and was immediately unable to continue performing his regular work duties. Throughout this period, Petitioner has either been advised to be completely off work or to return to work with certain light duty work restrictions. Respondent's Section 12 examiner, Dr. Matteini, agreed with Petitioner's inability to return to full duty work for a period of time as well. Specifically, she indicated he could return to work with no lifting over fifteen pounds and no repetitive bending. She also related the need for these restrictions to his April 28, 2025 accident.

Respondent's denial of TTD benefits however is based on the testimony from respondent's employees that Petitioner resigned from his employment following his April 28, 2025, work accident. However, the Arbitrator notes there does not appear to be significant evidence to support these witnesses. Both Respondent's witnesses, Ms. Anicua and Ms. Kalas, were not persuasive and admitted Petitioner refused to sign a resignation letter when asked to do so. This further supported Petitioner's testimony he never resigned and sought out a light duty position with respondent, which was not offered.

Further, both Respondent's witnesses confirmed that no light duty was offered nor even available for Petitioner following his accident. Ms. Anicua testified Respondent's employees are provided light duty work by the companies they were working for when injured. In this case, Petitioner was injured while working at Get Fresh Produce. If Get Fresh Produce has light duty work available, it is in their herbs department. Ms. Anicua confirmed that the herb position was never offered to Petitioner. Ms. Kalas testified that Petitioner asked for a lighter job after his accident of April 28, 2025. She confirmed the only job offered to him was his original picker position.

In the 17 3/7 weeks following his accident through the date of arbitration, Petitioner was never released back to full duty work by his treating medical providers or even by Respondent's Section 12 examiner, and did not work in any capacity for respondent or elsewhere. Respondent does not appear to have offered Petitioner a light duty position. Lastly, his condition has not yet stabilized. Therefore, he remains entitled to TTD benefits through the date of arbitration. *See Interstate Scaffolding, Inc.* 236 Ill.2d at 148.

Wherefore, Respondent shall pay Petitioner temporary total disability benefits totaling \$11,191.23, which represents \$642.12/week for seventeen-and-three-sevenths-weeks, commencing April 29, 2025, through August 28, 2025, as provided in Section 8(b) of the Act.

Issue M, penalties, the Arbitrator finds as follows:

The Arbitrator hereby incorporates by reference the Findings of Fact and Conclusions of Law contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l)*. The Court has found that the act of submitting medical bills into evidence at hearing is not the same as tendering them to the employer for payment. See *Theis v. Illinois Workers' Comp. Comm'n*, 2017 IL App (1st) 161237WC.

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515(1998). When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798, 805 (2005).

Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and is "frivolous." Section 16 refers to this language found in section 19(k) as well. See *820 ILCS 305/16, 19(k)* (West 2012). These penalties and fees address deliberate conduct or actions undertaken in bad faith.

Overall, the Arbitrator finds that petitioner is not entitled to penalties and fees under Sections 19(k), 19(l) and Section 16 because respondent's nonpayment of benefits was neither unreasonable nor vexatious. Respondent's conduct does not demonstrate bad faith or improper purpose. See below for further analysis. The Respondent had the Petitioner examined for an IME and also obtained an addendum when additional records were sent to their section 12 examiner. That IME made findings differing from the treating physicians (as well as MRI reports) regarding the diagnosis and proposed ongoing medical care, and also opined that petitioner had positive Waddell findings. *Id.* The Respondent eventually terminated TTD. The IME opinion recognized that petitioner sustained an exacerbation on the 4/28/25 date of accident but did not agree with the other recommendations for treatment. Respondent clearly relied on these reports and opinions in addition to their witnesses/employees who testified Petitioner had resigned, and were aware of the unrelated motor vehicle collision that injured the same affected body part, the lumbar spine.

Respondent's policy was to accommodate light duty for work related injuries per the witness testimony. Respondent took the position Petitioner quit his employment immediately after his April 2025 injury because he did not get the forklift position that he believed was a lighter duty position. It was not unreasonable for Respondent to believe their employees (prior to trial) in determining that Petitioner resigned and then not offering light duty as the assignment at Get Fresh was considered ended.

Despite the Arbitrator finding after trial that the respondent's witnesses were not be persuasive and Ms. Kalas was not credible, it is not unreasonable for Respondent to previously have relied on the statements or opinions of their managers/ employees which contrasted petitioner's assertions. The Arbitrator also notes that Respondent was not unreasonable in relying on their IME, Dr. Matteini. While the Arbitrator does not find Dr. Matteini's opinions entirely persuasive for reasons previously discussed, the arbitrator does not find it unreasonable for Respondent to have relied on their own retained expert in this dispute regarding Petitioner's causation, medical condition and ability to work.

Section 19(k) provides for penalties had the employer provided an unreasonable justification. That section does not apply in this case. Respondent retained a section 12 Examiner who examined Petitioner and issued 2 reports. Section 16 for attorney's fee does not apply in this case as penalties are not warranted as explained above.

Consequently, the Arbitrator finds that Respondent's denial of benefits was not evidence of improper purpose or in bad faith. The Arbitrator also finds that denial of benefits was not unreasonable given the ongoing disputes at the time of denial or delay. The Arbitrator accordingly finds that respondent's conduct does not amount to bad faith, such that penalties should be awarded. The Arbitrator denies payment of penalties and fees under Sections 19(k), 19(l) and Section 16 for the reasons previously stated above.

Case Number: 25WC017418 (DOA: 8/31/24)

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

To prevail on a claim for benefits under the Act, an employee must establish, among other things, that his or her current condition of ill-being is causally connected to a work-related injury. *Elgin Board of Education School Dist. U-46 v. Illinois Workers' Comp. Comm'n*, 409 Ill.App.3d 943, 948 (2011). 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. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003). Even if the claimant had a preexisting degenerative condition which made him or her more vulnerable to injury, recovery for an accidental injury will not be denied as long as he or she can show that his or her employment was also a causative factor. *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.” *Int’l Harvester v. Indus. Comm’n.*, 93 Ill. 2d 59, 63 (1982). The Arbitrator finds that Petitioner’s condition of ill-being as it pertains to his lower back is not causally related to his work accident of August 31, 2024. Instead, the Arbitrator has determined that Petitioner’s condition of ill-being as it pertains to his lower back is causally related to his work accident of April 28, 2025, which is discussed more fully in the Findings of Fact and Conclusions of Law for IWCC Case Number 25WC011732, above.

Regarding Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible “...for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury...” A claimant has the burden of proving that the medical services were necessary and the expenses were reasonable. See *Gallentine v. Industrial Comm’n.*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds that medical services provided to Petitioner for his lumbar spine injury on August 31, 2024, have been reasonable and necessary. Respondent has not paid all appropriate charges. There is only one outstanding bill, which the Arbitrator notes Respondent did not dispute at arbitration: \$432.40 from Physicians Immediate Care. For these reasons, Respondent shall pay reasonable and necessary medical services directly to Petitioner, pursuant to the medical fee schedule, of \$432.40 for medical care provided by and at Physicians Immediate Care, as provided in Sections 8(a) and 8.2 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

November 21, 2025
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC012933
Case Name	Noe Michael Martinez Jr. v. Nordstrom Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0174
Number of Pages of Decision	30
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Francesca Centracchio, Lawrence Gordon
Respondent Attorney	Robert Smith

DATE FILED: 6/4/2026

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NOE MICHAEL MARTINEZ, JR.,

Petitioner,

vs.

NO: 23 WC 12933

NORDSTROM, 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 accident, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability benefits, and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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 temporary partial disability ("TPD") benefits from April 21, 2023 through June 29, 2023. However, because the parties stipulated in the Request for Hearing form that TPD benefits were not at issue and further agreed in their Statement of Exceptions that the award should be stricken, the Commission vacates the Arbitrator's award of TPD benefits.

The Commission further finds that the COVID-19 testing performed by both Dr. Kane and Integrated Pain Management was neither reasonable nor necessary.

In its Statement of Exceptions, Respondent specifically argued that the bills from Dr. Kane, who billed for 25 COVID-19 tests between June 5, 2023 and April 8, 2024, under CPT codes

99072 (\$350.00) and 87811 (\$250.00), totaling \$15,000.00 were neither reasonable nor necessary. Similarly, the record reflects that Integrated Pain Management billed for 13 COVID-19 tests between May 25, 2023 and March 21, 2024, under CPT code 99072 (\$250.00), totaling \$3,250.00.

Aside from generalized references in the record regarding office safety precautions, no evidence was presented demonstrating an increased risk of COVID-19 infection during these respective periods sufficient to justify continued testing by either provider. Accordingly, the Commission finds that the amounts billed for such testing, \$15,000.00 for Dr. Kane and \$3,250.00 for Integrated Pain Management, were neither reasonable nor necessary.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed August 26, 2025, is hereby modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$1,848.20 per week for a period of 56-4/7 weeks, April 15, 2023 through April 20, 2023, and June 5, 2023 through June 28, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$50,045.25 for medical expenses under §8(a) of the Act, and subject to the medical fee schedule.

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.

23 WC 12933

Page 3

June 4, 2026

CAH/tdm

O: 5/21/26

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	23WC012933
Case Name	Noe Michael Jr Martinez v. Nordstrom Inc
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Lawrence Gordon
Respondent Attorney	Robert Smith

DATE FILED: 8/26/2025

/s/ Charles Watts, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 26, 2025 3.92%

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**

Noe Michael Martinez Jr.

Employee/Petitioner

v.

Nordstrom, Inc.

Employer/Respondent

Case # **23** WC **012933**

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 **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **June 28, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **04/15/2023**, 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* 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 **\$150,000.00**; the average weekly wage was **\$2,884.61**.

On the date of accident, Petitioner was **42** years of age, *single* with **1** dependent children.

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

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$21,762.05** for other benefits, for a total credit of **\$21,762.05**.

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

ORDER***Temporary Total Disability***

Respondent shall pay Petitioner temporary total disability benefits of **\$1,848.20/week**, commencing 6/5/23 through 6/28/24, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of **\$0**, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical for American Diagnostic - **\$2,250.00**, Integrated Pain Management **\$5,830.68**; Dr. John F. Kane **\$23,027.97**, EQMD **\$1,161.60** and La Clinica **\$36,025.00**.

Respondent shall pay reasonable and necessary medical services, including all open and future medical, as provided in Section 8(a) of the Act.

Penalties

No penalties are awarded.

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

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

A handwritten signature in blue ink on a yellow rectangular background. The signature appears to read "Charles M. Walter".

Signature of Arbitrator

AUGUST 26, 2025

ILLINOIS WORKERS’ COMPENSATION COMMISSION

NOE MICHAEL MARTINEZ,	)	
	)	
Employee/Petitioner,	)	Case No. 23 WC 012933
	)	
v.	)	Arb. Charles Watts
	)	
NORDSTROM,	)	
	)	
Employer/Respondent.	)	

Introduction

An Application for Adjustment of Claim was filed on May 8, 2023. The case was heard by the Honorable Charles Watts, Arbitrator of the Workers’ Compensation Commission, in the city of Chicago, on June 28, 2024. After hearing the proofs and reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues below and includes those findings in this document.

Findings of Fact

I. PETITIONER’S MECHANISM OF INJURY

A. April 2, 2023 Sports Injury

Prior to April 15, 2023, Petitioner suffered an injury to his right leg while playing basketball on April 2, 2023. (Tr. 9). Petitioner indicated that his injury felt “like a really bad sprain.” (Tr. 10.) The pain was located in Petitioner’s Achilles tendon and rated between 4 and 6. (Tr. 11). Petitioner was seen at St. Alexian Brother’s emergency room with pain in the right leg however, it was noted that Petitioner had a negative Thompson test. (Resp. Ex. 1, 41-42). Petitioner testified that he was subsequently seen by Dr. Connor who placed him in a boot. (Tr. 11). Petitioner testified that Dr. Connor did not send him for surgery and that he subsequently returned to work the following Thursday or Friday. (Tr. 13-14). Petitioner testified that upon returning to work

following his April 2, 2023 sports injury, he was able to perform his “normal job duties” with the exception that he “was put on a knee scooter and I just took elevators and I had a basket on my knee scooter which I would put the shoes and stuff in.” (Tr. 14). Following the April 2, 2023 work injury, Petitioner worked the “same number of days that he had worked prior to April 2, 2023” and worked same number of hours he had worked prior to April 2, 2023”. Petitioner continued to work in that capacity until April 15, 2023. (Tr. 14). At the time, Petitioner returned to work, he indicated that he believed his tendon was in the process of healing. (Tr. 43).

Q. And at the time that you returned back to work was the -- at the time you returned back to work prior to your April 15, 2023, work injury, was the condition of your Achilles tendon improving?

A. As far as I know it was healing, yes. (Tr. 43).

B. April 15, 2023 Work Injury

Petitioner subsequently suffered a work-related injury on April 15, 2023. (Tr. 14). On April 15, 2023, Petitioner, Noe Michael Martinez, was employed as a 42-year-old full-time designer shoe salesman at Nordstrom, Inc. (“Nordstrom”). (Tr. 6-7). Petitioner testified that he arrived to work at approximately 9:45 [a.m.]” (Tr. 14). On April 15, 2023, Petitioner worked his usual shift, “10:00 to 6:00”, however Petitioner usually came “in around 9:45 and get started on [his] opening duties.”

Petitioner’s duties as a full-time designer shoe salesman were to “organize and make sure everything is sized correctly, everything is easy to find and then the manager usually gives me something fulfilling orders, web orders or putting away shoes that were returned from the day prior, things of that nature.” (Tr. 7-8). These tasks were done “before and after [Petitioner’s] shift.” (Tr. 7-8)

Petitioner indicated that at the time of his work injury, he was assisting a personal customer and subsequently tripped on a shoe box which was sticking out of the wall causing him to further injure his right leg. (Tr. 16-18). This was at approximately 7:00 PM. (Pet. Ex. 2).

Q. "So can you tell us did anything significant happen on April 15th of 2023?"

A. I" had a personal client that comes in, she loves shoes, so we were trying on a lot of shoes. We had a pile of keep and a pile of go back, and in the pile of go back shoes I grabbed two of them, went back to the stockroom on the woman's shoe side to put them away. I went through –"

A. "Yes, so I was putting the shoes back, in the Nordstrom stockroom there is two size aisles, one is this big and the other is probably this big."

THE ARBITRATOR: "Okay, just for the record, the witness for sizing the big aisle was approximately about somewhere between 5 and 6 feet wide, where as the smaller aisle he was describing was somewhere around more like 3 feet wide."

THE WITNESS: "Probably closer to 2, 2 and a half maybe."

THE ARBITRATOR: "Okay, so somewhere between 2, 2 and a half, approximately shoulder width."

THE WITNESS: "I was going through that aisle, had shoes in my hand. There is an empty bin to my right, there was no shoes in that bin. I was walking through it. I did not realize that there was two Farm Rio boxes, and they are really big boxes, and so in that bin they were sticking out about three inches or so. I didn't see it because I had the shoes in my hand and I was focusing walking straight. My boot got caught on it. I didn't feel it because I was wearing a boot it as an air cast in it so I didn't feel it. As I started to walk, I started to trip and there was really only two options, I fall flat on my face in the concrete so my instinct kicked in and I caught myself so I wouldn't fall flat on my face, and when I did so I extended my right leg that was hurt to catch myself, and when I extended it and planted it, it was the most excruciating pain I've ever felt in my life. I felt it, I could feel it rip even more. I screamed in pain and then laid on the floor and that's when Lorne, Jose, Dexter and William came to my aide and brought me my knee scooter and kind of sat with me for a second, said do you need anything; and from that point on I just got up and I apologized to my customer, and I went straight home because I was in so much pain." (Tr. 16-18).

Petitioner's testimony regarding his mechanism of injury was corroborated by, Lorne Epps, a fellow employee of Nordstrom, Inc., who was present at the time of Petitioner's injury. Mr. Epps testified that Petitioner suffered a fall while helping a customer at work on April 15, 2023. (Tr. 48-49). Mr. Epps also testified that he perceived Petitioner to be in severe pain following the April 15, 2023 work injury and that he did not see much of Petitioner following that injury. (Tr. 48-49).

A. "I remember him, like, sitting there for a good amount of time. A few people asked if he wanted help up, and he was like recollecting himself, but you could tell he was in pain, his face was flustered and everything. From there I was with a customer, so I was back and forth, but I would say he was sitting on the ground for over five minutes, just trying to regain his composure and everything. I don't remember seeing him after that, but I assume he went home, that's all I can remember from that." (Tr. 48-49).

Petitioner testified that at the time of his April 15, 2023 work injury, his pain had substantially increased since his April 2, 2023 sport injury and that he now had pain shooting into his calf. (Tr. 18-19).

Q. "So the pain you felt immediately following your injury, how did that pain differ from the pain you felt prior to your April 15, 2023, work injury?"

A. "Well, again, on a scale of 1 to 10, that was the most excruciating pain I've ever felt in my life, and I've been bit in the head by a Doberman pincher, so it was a ten."

Q. "Was there any change in the location of your pain?"

A. "It went actually from the bottom of my heel to the calf area." (Tr. 18-19).

Petitioner testified that after his injury, he was unable to continue working and went home. (Tr. 18.) Petitioner informed his manager, Alyza, of the injury that night, however, the Respondent never sent Petitioner to seek medical treatment for his injury. (Tr. 19-20; Pet. Ex. 2)

II. PETITIONER'S SUBSEQUENT MEDICAL TREATMENT

Petitioner indicated that following his April 15, 2023 work injury, he attempted to seek medical treatment from Dr. Connor, but was unable to obtain medical treatment since this was a

“Workmen’s Comp issue.” (Tr. 20-21). Petitioner eventually was able to see Dr. Xia in early to mid-May. (Tr. 21-22; Pet. Ex. 5, pg. 39-40). At the time of Petitioner’s appointment with Dr. Xia, he continued to have pain in his right leg rated 8-9. (Tr. 22). Petitioner also experienced significantly more swelling, and was unable to stand for as long as he had been prior to the April 15, 2023 injury. (Pet. Ex. 5. Pg. 39).

Petitioner was recommended for an MRI of his right ankle which showed severe Achilles tendinopathy with deficit tissue 1 cm above the insertion into the calcaneus and extending over 2 ½ cm in length. (Pet. Ex. 3, pg. 44; Pet. Ex. 4, pg. 3). The MRI was reviewed by Petitioner’s orthopedic surgeon, Dr. John F. Kane at his initial visit of June 5, 2023. (Tr. 22; Pet. Ex 5, Pg. 39-40). Dr. Kane then recommended that Petitioner undergo surgery to repair his Achilles tendon, and took Petitioner off work beginning on June 29, 2023. (Tr. 24; Pet. Ex. 4, pg. 2-7). Petitioner was subsequently taken off work due to have increased pain in the left leg due to overcompensating for the injury to the right leg. (Pet. Ex. 5, pg. 33). Since June 5, 2023, Petitioner has been unable to return to work performing his normal job duties. (Tr. 25, 37).

Q. “Have you been able to return to work performing your normal job duties since June 5th of 2023?”

A. “I have not, no.”

A. “I can no longer carry heavy items. I can no longer pick things up off the floor. I can no longer take a couple stairs or whatnot, it was difficult.” (Tr. 37).

Subsequent to the April 15, 2023 work injury, Petitioner testified that he is also unable to perform the activities of his daily life. (Tr. 25).

Q. “And as it stands now, are there any activities which you could do prior to your April 15, 2023, work injury that you're no longer able to do since the injury?”

A. “Yes.”

Q. “Can you explain further what those things are?”

A. "I mean, something as simple as taking out the garbage, stairs, something simple as playing with my son, taking a shower, getting dressed. I'm a really active person. So I want to play with my son. I want to go back to work." (Tr. 25).

Since the April 15, 2023 work injury, Petitioner has indicated that his pain has not returned to the level it was at prior to the April 15, 2023 work injury. (Tr. 25-26).

Q. "And as it relates to the pain you currently have in your right leg, has your pain level ever returned to the way it was prior to your April 15, 2023, work injury?"
A. "No." (Tr. 25-26).

Following the April 15, 2023 work injury, Petitioner was also recommended for and underwent a course of physical therapy. (Tr. 42-43; Pet. Ex. 7).

Q. "Noe, you were recommended for physical therapy by Dr. Kane, correct?"
A. "Correct."
Q. "And you continued physical therapy through March of 2024?"
A. "Correct."
Q. "Why did you stop physical therapy?"
A. "I was told that I need -- to continue physical therapy I would need surgery first."
Q. "And as of discontinuing physical therapy, had you had significant improvement in the condition of your Achilles tendon?"
A. "No." (Tr. 42).

Q. "And has the condition of your Achilles tendon gone back to the way it was prior to having your April 15, 2023, work injury?"
A. "No". (Tr. 43).

III. Dr. Lee's Testimony

Petitioner presented for an IME with Dr. Simon Lee on August 21, 2023. (Resp. Ex. 1, pg. 15). Dr. Lee took a history from Petitioner which was consistent with Petitioner's medical records following the April 15, 2023, work injury. (Res. Ex 1, pg. 16-17, 41; Pet. Ex. 4, pg. 2-7).

A. "He notes that on April 15, 2023 he was in the storeroom of the shoe department walking with his boot and several boxes in front of him that he was carrying. He states he was unable to see directly in front of him. Due to the CAM boot being on his right lower

extremity he states he tripped on some boxes that were sticking out of the storage area. As he tried to catch himself, he states that he once again had significant pain in the right posterior calf and Achilles region.” (Res. Ex 1, pg. 16-17).

Q. “Doctor, you'd agree that Mr. Martinez indicated that he did have a work injury on April 15, 2023, correct?”

A. “Correct.”

Q. “And, Doctor, you'd agree that you reviewed medical records which indicate a work-related injury on April 15, 2023, correct?”

A. “Correct.”

Q. “And, Doctor, do you have any reason to doubt the truthfulness or veracity of Mr. Martinez's statements to you about his work injury?”

A. “No.” (Res. Ex 1, pg. 41).

At the time of physical examination, Petitioner reported to Dr. Lee that he continued to have pain in the right posterior ankle. (Resp. Ex. 1, pg. 18). Dr. Lee also noted that the Achilles as was very tender to palpation. (Resp. Ex. 1, pg. 18). Dr. Lee testified that Petitioner described the pain as aching and burning and stated that Petitioner had difficulty with prolonged standing and walking activities at the time of examination. (Resp. Ex. 1, pg. 18, 39). Dr. Lee also noted atrophy of the right calf to visual inspection, with three out of five strength in dorsiflexion, inversion, and eversion, a positive Thompson test, and fusiform thickening throughout the distal Achilles to the myotendinous juncture. (Resp. Ex. 1, pg.21-23).

A: “He continued to complain of pain in the right posterior ankle and Achilles and very tender to palpation. He described also aching and burning and difficulty with prolonged standing and walking activities, and he was currently taking Meloxicam.” (Resp. Ex. 1, pg. 18).

Q. “Can you kindly explain what your examination revealed?”

A. “On exam he was presenting wearing gym shoes without any assistive devices. He was noted to have atrophy of his right calf to visual inspection.” (Resp. Ex 1, pg. 21).

A: “He had a weak but present Thompson sign or Thompson test on the right as well as a normal Thompson test on the left. On the right posterior there was generalized fusiform thickening throughout the

distal Achilles to the myotendinous juncture.” (Resp. Ex. 1, pg. 22-23).

Dr. Lee opined that Petitioner suffered a temporary aggravation of a pre-existing condition as it relates to Petitioner’s April 15, 2023 work injury at the time of his IME but also potentially concedes on cross examination that the June 1, 2023 MRI showed worsening of the condition of Petitioner’s Achilles tendon, when compared to the April 13, 2023 MRI. (Resp. Ex. 1, pg. 49-56, 60).

Q. “So, Doctor, moving along, I want to direct you what I have marked as Petitioner's Exhibit No. 5 -- no, 6. This is the April 13, 2023 MRI from Chicago North Side MRI and imaging.” (Resp. Ex 1, pg. 49)

Q. “And, Doctor, did you get to review the report, the actual images or both?”

A. “Both.”

Q. “Doctor, per the report that I'm showing you here, at the time of this MRI Mr. Martinez was diagnosed with a high-grade partial tearing of the Achilles tendon. Correct?”

A. “Correct.” (Res. Ex 1, pg. 50)

Q. “So, Doctor, either way, I'll direct you to the paragraph that indicates findings, approximately five lines down, that first full sentence starting with the myotendinous junction. Doctor, can you read that for me?”

A. “The myotendinous junctions at the proximal Achilles remain intact with mild secondary edema in the musculature of the posterior compartment of the imaged calf. Torn tendon fibers appear slightly retracted proximal and distally, though there's no discrete fluid or hemorrhage to fill the gap.”

Q. “And, Doctor, what is the myotendinous juncture?”

A. “That's essentially the area between the muscle and the tendon where those two things overlap or the area where one thing becomes the other.”

Q. “And, Doctor, in a patient that has an Achilles tendon rupture, it’s true they can have a rupture of the Achilles tendon with no I guess affect on that myotendinous juncture, correct?”

A. “Correct. It’s fairly rare to have a rupture that occurs at the myotendinous juncture. It’s typically more distal or closer to the heel bone where you would see the rupture. So the myotendinous

juncture is kind of more towards the calf, the top of the calf muscle, so most Achilles tendon ruptures will occur closer to the ankle.

Q. And, Doctor, you'd agree that the images you reviewed are consistent with the findings of this report that there was no tearing at the myotendinous junction, correct?"

A. "Correct." (Res. Ex 1, pg. 50-52).

Q. "And, Doctor, you'd agree that a tear in the myotendinous junction is an abnormal finding, correct?"

A. "Correct, it's showing that there's been an injury."

Q. "And, Doctor, you have no reason to doubt -- or no reason to dispute that Mr. Martinez suffered an injury to his myotendinous junction on April 15, 2023, correct?"

A. "That may have been part of the injury, yes". (Resp. Ex. 1, pg. 60).

Dr. Lee testified that Petitioner was still within the period of time for conservative management as of a November examination by Dr. Kane but that Petitioner may be a candidate for surgery in the future. (Resp. Ex. 1, pg. 6-64, 67-69).

Q. "And per your testimony earlier today you indicated that someone who's recovering nonsurgically from an Achilles tendon rupture would likely reach MMI after six to nine months, correct?"

A. "Correct."

Q. "Doctor, would you agree generally based on your experience as an orthopedic surgeon that a patient that didn't achieve healing or didn't achieve a complete consolidation of his Achilles tendon rupture after that six to nine months from his date of injury, that they would likely be a candidate for surgery?"

A. "Yeah, it's possible." (Res. Ex 1, pg. 61-62).

Q. "Doctor, I know you haven't gotten a chance to review this note specifically, but I'm going to direct you to what I have marked as Petitioner's Exhibit 19, for identification. It's the November 28, 2023 office note from Dr. John Kane." (Res. Ex 1, pg. 62).

Q. "And, Doctor, would it be reasonable at this time to, based on the fact that the patient has not recovered from his Achilles tendon rupture approximately seven months later in time based on his date of injury of April 15, 2023, that that patient will be considered a candidate for surgical intervention?"

A. "Potentially, yes." (Res. Ex 1, pg. 63-64).

Q. "Doctor, you also testified on direct examination and reported in your IME report in your answer to Interrogatory No. 6 that you did not see an indication for surgical intervention at this juncture. When you made that statement, you indicated that you didn't see a -- I'm sorry, what did you mean when you made that statement?"

A. "I mean, essentially at that juncture from his injury he is still within the recovery period of nonsurgical treatment and management, so I don't think there's an indication to suddenly do surgery on somebody who's being managed from a nonsurgical pathway; like you would maximize that and see how a patient does before you decide any surgical intervention needs to be performed. So an acute rupture or rerupture or aggravation should typically be, if you're going to do surgery, be performed within two, three weeks at the maximum after the injury. So at this juncture he was almost four months after the, you know, reinjury, and so at that point you should continue the conservative treatment unless you confirm that it's failed."

Q. "Doctor, just to clarify based on your statements, it wasn't your intention to say that Mr. Martinez would never be a candidate for surgical intervention, correct?"

A. Correct. At that juncture I did not see an indication for surgery, which I indicated at this juncture. So as we stated, I did not specify in the future. (Res. Ex 1, pg. 67-69)."

Dr. Lee opines that Petitioner suffered a temporary aggravation of pre-existing partial Achilles tendon rupture since Petitioner returned to work one-week following his April 15, 2023 work injury. However unlike, the April 2, 2023 sport injury, Dr. Lee concedes that Petitioner was not instructed to return to work by his treating physician. (Resp. Ex. 1, pg. 67).

Q. "So, Doctor, you'd agree that no doctor or physician returned Mr. Martinez to work a week after his work injury of April 15, 2023, correct?"

A. "Correct, based on the history it does not sound like he specifically had a medical release to return to work."

Q. "So, Doctor, you'd agree that based off your review of the medical records that Mr. Martinez could have needed additional time off work following his April 15, 2023 work injury?"

A. "Correct, it's possible." (Res. Ex 1, pg. 67).

Dr. Lee further conceded that the restrictions recommended in his August 21, 2023 IME Report would be attributable to both the April 2, 2023 sport injury and the April 15, 2023 work injury. (Resp. Ex. 1, pg. 75).

Q. "Doctor, you indicated that per your report and your answer to Interrogatory No. 7 that Mr. Martinez would be I guess eligible or would have the necessity for restrictions in relation to his Achilles tendon rupture, correct?"

A. "Correct."

Q. "And, Doctor, you attributed those restrictions to the April 2nd, 2023 sports injury, correct?"

A. "Either one. I think those are both reasonable restrictions based on either one of those injuries at that juncture."

Q. "So, Doctor, at the time of your examination of Mr. Martinez it would have been reasonable to also give Mr. Martinez restrictions based on that April 15, 2023 aggravation, correct?"

A. "Correct." (Res. Ex 1, pg. 75).

Dr. Lee indicated in his IME report that he attributed the need for additional treatment and restriction to the April 2, 2023 sport injury. At his deposition, Dr. Lee indicated he could not differentiate between what portion of Petitioner's injury was caused by the April 2, 2023 injury as opposed to the April 15, 2023 work injury. (Res. Ex 1, pg. 101).

Q. "But, Doctor, you'd agree that based on -- that the severity or the presence of some of these factors taken four months after the work injury, about four and a half months after the sports injury, that you can't differentiate what portion of these findings is attributable to either injury, correct?"

A. "Correct, you can't differentiate at this point." (Res. Ex 1, pg. 101).

IV. Dr. Kane's Testimony

Dr. John F. Kane, a board certified, fellowship trained orthopedic surgeon issued a narrative report on July 7, 2023, concerning his treatment of Petitioner's Achilles tendon rupture. (Pet. Ex. 8; Pet. Ex. 9, pg. 10). Dr. Kane testified that although Petitioner had a prior injury on

April 2, 2023, that the condition was improving as of April 7, 2023 appointment. (Pet. Ex. 9, pg. 15-16.)

Q. "And, Doctor, per this note, report of Dr. Connor, Mr. Martinez indicated that his pain and his -- his pain and his swelling in his leg had been improving since the date of injury."

A. "Yes." (Pet. Ex. 9, pg. 15-16).

Dr. Kane opined that opined that Petitioner's June 1, 2023 MRI showed a permanent aggravation of the pre-existing condition of Petitioner's Achilles tendon as evidenced by more severe gapping at the location of the tear also with and additional tear at the myotendinous juncture. (Pet. Ex. 9, pg. 20-21, 27).

Q. "And, Doctor, per your review of the images of the MRI, were there any changes from the MRI of April 13th, 2023?"

A. "Yes, there were."

Q. "What were the changes?"

A. "It was more of a severe -- a more severe gapping at -- where the tear was on the Achilles tendon, and some more teno- -- well, more Achilles tendon inflammation and swelling, mild tendinous tearing." (Pet. Ex. 9, pg. 20-21).

Q. "And, Doctor, what does the presence of an additional tear in the Achilles tendon signify for you clinically?"

A. "Well, it's an increase in weakness of the Achilles tend- tendon. I mean, it's a worsening of the condition." (Pet. Ex. 9, pg. 27).

Dr. Kane opined that as a result of the April 15, 2023 injury, Petitioner experienced a permanent or "chronic" aggravation of his Achilles tendon. Dr. Kane specifically disagreed that Petitioner's condition was one that would have resolved after one week as the tearing or elongation of the Achilles tendon would cause lasting loss of function and strength. (Pet. Ex. 9, pg. 30).

Q. "Doctor, per that IME report, Dr. Lee opines that Mr. Martinez suffered a temporary aggravation of his Achilles tendon rupture. Do you agree that the aggravation felt by Mr. Martinez was temporary, or was it permanent in nature?"

A. "Well, as a result of the second injury, it lengthened and gapped the injury worse than it was. So the pain might be temporary, but the

effect is one to be chronic. It separated the tendon -- it separated the ends of the tendon.” (Pet. Ex. 9, pg. 30).

A. “So when these muscles try to fire, these muscles trying to do their job, they're pulling on a very weak or nonexistent connection to the heel, and that's -- so that will heal.

And the term "healed" is a misnomer in many cases, because healed doesn't mean it's healed right. It just healed where it's at. And it fills -- the body is amazing the way it can fill these areas in with scar tissue. So there is some function. He can get along, but it's not like before the injury.” (Pet. Ex. 9, pg. 31-32).

Dr. Kane also testified that the additional injuries visualized on the June 1, 2023 MRI would have required additional medical treatment unrelated to the April 2, 2023 sports injury. (Pet. Ex. 9, pg. 67-68).

Q. “And, Doctor, based on the April 13th, 2023 MRI, which I'm showing you now, and which we've already discussed and marked as Petitioner's Exhibit 6, Mr. Martinez was diagnosed with a tear of the Achilles tendon, without significant gapping, correct?”

A. “The diagnosis here is -- or the impression is what you're asking?”

Q. “Yes.”

A. “High-grade partial tearing of the Achilles.”

Q. “And, Doctor, per your review of the MRI dated June 1st, 2023, it was noted that Mr. Martinez had significant gapping with his tendon tear, correct?”

A. “Yes.”

Q. “So, Doctor, based on your review of the medical records and your discussions and treatment of Mr. Martinez, is it your opinion that the increase in the gapping of Mr. Martinez' Achilles tendon tear was caused by the April 15th, 2023 injury?”

A. “Yes.”

Q. “Doctor, in terms of this gapping, does this, I guess, subject, Mr. Martinez to needing any increased treatment?”

A. “Yes.” (Pet. Ex. 9, pg. 67-68).

IN SUPPORT OF THE ARBITRATOR’S FINDING IN RELATION TO ITEM (C) WHETHER PETITIONER’S ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE, OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

It is undisputed that Petitioner's April 15, 2023 work injury arose out of and in the course of Petitioner's employment by Respondent.

"In a workers' compensation case, the claimant has the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment." *Litchfield Healthcare Center v. Industrial Com'n*, 349 Ill.App.3d 486, 489 "The determination of whether an injury arose out of and in the course of a workers' compensation claimant's employment is a question of fact for the Industrial Commission to resolve and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Id.* At 489. "An employee's injury is compensable under the Workers' Compensation Act only if it arises out of and in the course of the employment; both elements must be present at the time of the claimant's injury in order to justify compensation." *Id.* At 489.

"For an injury to 'arise out of the employment' for workers' compensation purposes, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* At 489-490. "Typically, an injury arises out of one's employment for workers' compensation purposes 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; a risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Id.* At 490.

The Arbitrator observed Petitioner testify at trial and found his responses to questions to be quick and with an easy manner. Petitioner appeared forthright in his body mannerisms and speech patterns. Petitioner's credibility was confirmed by a review of the medical records.

Petitioner credibly testified that he suffered a work-related injury while completing his task of putting shoes into the stockroom. It is undisputed that returning shoes to the stockroom is within the scope of the Petitioner's employment.

Accordingly, the Arbitrator finds that Petitioner's April 15, 2023 accident arose out of and in the course, of petitioner's employment by Respondent.

IN SUPPORT OF THE ARBITRATOR'S FINDING IN RELATION TO ITEM (F) WHETHER PETITIONER'S NEED FOR SURGICAL INTERVENTION WAS CAUSED OR CONTRIBUTED TO BY THE MANNER IN WHICH PETITIONER INJURED HIMSELF ON APRIL 15, 2023 OR THE SUBSEQUENT TREATMENT THEREFROM, THE ARBITRATOR FINDS AS FOLLOWS:

The evidence has shown that Petitioner's April 15, 2023 work injury contributed to Petitioner's need for surgical intervention. While Dr. Lee stated that surgical intervention would have been reasonable as of April 2, 2023, Dr. Lee does not testify that the April 15, 2023 work injury definitively did not contribute to Petitioner's need for surgical intervention.

It is undisputed that Petitioner suffered a compensable injury on April 15, 2023. The only dispute is whether Petitioner's recommendation for an Achilles tendon repair is the result of that work injury or a solely the result of a pre-existing condition.

The April 15, 2023 accident arose out of and in the course of Petitioner's employment with Respondent. Petitioner sustained a compensable injury to his Achilles tendon while returning shoes to the back stockroom. As a result of the injury, Petitioner has been recommended for surgery in the form of an Achilles tendon repair. Respondent disputes that the need for surgery arose out of Petitioner's April 15, 2023 work injury.

Respondent relies on the independent medical examination of Dr. Simon Lee, who opined that Petitioner's current condition is solely the result of a pre-existing sport injury.

“The claimant has the burden of establishing the nature and extent of his injury by a preponderance of the evidence.” *Lenhart v. Industrial Comm’n*, 2015 IL App. (3d) 130743WC, ¶ 31, citing *Chicago Park District v. Industrial Comm’n*, 263 Ill. App. 3d 835, 843, 635 N.E.2d 770 (1994).

There is no credible dispute that Petitioner suffered a permanent aggravation of his pre-existing Achilles tendon rupture. The nature and extent of the injury is well-documented. The records of Petitioner’s treating physicians, Dr. Kane, a board-certified, fellowship trained orthopedic surgeon, support the conclusion that Petitioner’s current condition is causally connected to the April 15, 2023 work injury. Dr. Kane testified that although Petitioner suffered a non-work related injury to his Achilles tendon prior to April 15, 2023, that Petitioner suffered greater injury on this date as evidenced by the objective diagnostic testing shown on the June 1, 2023 MRI. Dr. Kane testified that the June 1, 2023 MRI showed a progression of Petitioner’s Achilles tendon tear as well as gapping at the myotendinous insertion. This causes a permanent increase in Petitioner’s pain, inability to weight-bear on the right foot, and an inability to perform his required work duties.

Petitioner’s testimony similarly supports this conclusion. Prior to his April 15, 2023 work injury, Petitioner testified that he was treated with immobilization and that although he still had some pain, he perceived that his Achilles tendon was in a state of healing. Petitioner testified that although he had some pain in his right ankle and leg prior to the April 15, 2023 work injury, following the injury his pain never returned to the level it was at prior to April 15, 2023. Petitioner testified that his right ankle and leg pain remains constant and unresolved. “In cases involving a preexisting condition, recovery of workers' compensation benefits will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting

disease, such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury.” *Elgin Bd. of Educ. School Dist. U-46 v. Illinois Workers' Compensation Com'n*, 409 Ill.App.3d 943, 949 (2011). “The accidental injury need neither be the sole causative factor nor the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being.” *Id.* at 949. (See also *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 204–05 (2003). Given that Petitioner suffered an elongation of his Achilles tendon rupture along with an additional tear of the myotendinous juncture, it is reasonable to infer that there was an aggravation or acceleration of the condition of Petitioner’s Achilles tendon.

Respondent claims that Petitioner’s suffered a temporary aggravation of his Achilles tendon rupture simply because Petitioner returned to work following approximately one week from his injury. However, no physician determined that Petitioner could return to work following his April 15, 2023 work injury. Moreover, Petitioner testified that his pain never returned to baseline following the April 15, 2023 work injury. It should be noted that upon being examined by an orthopedic surgeon and due to the aggravation of Petitioner’s Achilles tendon, that Petitioner was taken off work and has remained off work to date. Respondent’s own expert, Dr. Lee also opined that Petitioner could not return to work full-duty following his Section 12 examination, and recommended that Petitioner be restricted to light to including “ground level work with minimal bending, stooping, squatting activities with no lifting, pushing, pulling greater than 5 pounds, limited ladder and stair climbing.” Dr. Lee conceded that these restrictions could be attributed to the April 15, 2023 work injury.

As stated in *International Vermiculite Co. v. Industrial Commission*, 77 Ill.2d 1 (1979)(citing *Riteway Plumbing v. Industrial Com.* (1977), 67 Ill.2d 404, 411-12), “a claimant's injury need not be the sole factor which aggravates a preexisting condition, so long as it is a factor

which contributes to the disability; if the injury is a contributing factor, compensation will be allowed even if it is also possible that disability may have resulted from natural degenerative change or from other contributing factors.”

“Opinions of both medical witnesses that claimant's injury might have aggravated his preexisting condition, *i.e.*, arteriosclerosis, satisfied claimant's burden of proof, and even if one of the medical witnesses was equivocal on the question of causation, it was for Industrial Commission to decide which medical view was to be accepted.” Taking into account the medical records, the testimony of Dr. Kane, Dr. Lee, and Petitioner’s own testimony, it is indisputable that Petitioner suffered a permanent aggravation or exacerbation of his pre-existing condition of his Achilles tendon which necessitated additional medical treatment, including a recommendation for an Achilles tendon repair. The Arbitrator finds the opinions of Dr. Kane more persuasive than those of Dr. Lee in general but also specifically on the issue of whether Petitioner’s injury worsened after the April 15, 2023 work accident. This being the crucial question, Dr. Kane’s opinions are the most credible.

Accordingly, the Arbitrator finds that Petitioner’s current condition of ill-being and the treatment incurred by Petitioner from April 15, 2023 to date is causally related to her accident of April 15, 2023.

IN SUPPORT OF THE ARBITRATOR’S FINDING IN RELATION TO ITEM (J) WHETHER PETITIONER’S MEDICAL BILLS ARE REASONABLY NECESSARY AND RELATED TO THE APRIL 15, 2023 WORK INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Upon finding that Petitioner’s current condition of being ill is related to Petitioner’s April 15, 2023 work injury, we now move on to the issue of whether the medical treatment rendered to Petitioner was reasonable and medically necessary.

“Whether medical expenses are reasonable and necessary is a question of fact for the Industrial Commission, and the Commission's determination will not be overturned unless it is against the manifest weight of the evidence.” *Shafer v. Illinois Workers’ Compensation Com’n*, 2011 IL App (4th) 100505WC ¶ 51. “If the employer fails to introduce any evidence to suggest that medical services rendered a workers' compensation claimant were not necessary or that the charges were not reasonable, an award to a claimant who presents some evidence in support of the award for medical expenses will be upheld.” *Id.*

Here, there is no dispute as to the reasonableness of Petitioner’s treatment which includes physical therapy and diagnostic testing. Dr. Kane has opined that all treatment rendered to Petitioner was necessitated by the April 15, 2023 work injury. Dr. Lee even opined that Petitioner’s treatment was reasonable and given that Petitioner is still symptomatic, that surgery would also be reasonable at this juncture.

Respondent produced no evidence that the medical bills incurred are unreasonable or unrelated to Petitioner’s injury. Accordingly, the Arbitrator orders that Respondent pay all benefits due and owing under the Act for the following providers: American Diagnostic - \$2,250.00, Integrated Pain Management \$5,830.68; Dr. John F. Kane \$23,027.97, EQMD \$1,161.60, and La Clinica \$36,025.00.

IN SUPPORT OF THE ARBITRATOR’S FINDING IN RELATION TO ITEM (K) WHETHER PETITIONER IS ENTITLED TO PAYMENT OF 56 WEEKS TTD RESULTING FROM APRIL 15, 2023 WORK INURY, THE ARBITRATOR FINDS AS FOLLOWS:

At the time of trial, Petitioner was owed 56 weeks of unpaid TTD. “To be entitled to temporary total disability (TTD) workers' compensation benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work.” *Shafer v. Illinois Workers’ Compensation Com’n*, 2011 IL App (4th) 100505WC ¶ 45. “The determination of whether a

workers' compensation claimant was unable to work and the period of time during which a claimant is temporarily and totally disabled are questions of fact to be determined by the Industrial Commission, and the Commission's resolution of these issues will not be disturbed on appeal unless it is against the manifest weight of the evidence.” *Id.* ““Total disability,’ as that term is used in the Workers' Compensation Act, does not mean total physical and mental incapacity; rather, an employee is considered totally disabled when, because of a work-related injury, he or she is able only to perform services which are so limited in quality, dependability, or quantity that a reasonably stable labor market for them does not exist.” *Id.* at 47.

In *Shafer*, Petitioner testified that she had severe pain in both knees which prevented her from working which was corroborated by Shafer’s treating physician who determined that Petitioner was unable to work and placed her off. *Shafer v. Illinois Worker’s Compensation Com’n.*, 2011 IL App (4th) 100505WC ¶ 45. Like the petitioner in *Shafer*, Petitioner testified that he had constant severe pain in the Achilles tendon. Petitioner took one week off work following his injury which both Petitioner and Respondent’s experts agree was reasonable. Petitioner was subsequently taken off work again following his visit on June 29, 2023 due to continued pain and difficulty weight-bearing. Petitioner has been unable to return to work since June 29, 2023, as Petitioner had begun to feel additional pain in his left leg due to over compensating for the right leg. This pain prevented Petitioner from walking and lifting as much as he used to. Petitioner’s treating physician likewise determined that Petitioner was unable to work as he took him off work beginning June 29, 2023, and has kept him off work since. There can be no dispute that Petitioner was temporarily totally disabled.

“The compensation rate for temporary total incapacity under this paragraph (b) of this Section shall be equal to 66 2/3 % of the employee's average weekly wage computed in accordance

with Section 10, provided that it shall be not less than $66 \frac{2}{3}$ % of the sum of the Federal minimum wage under the Fair Labor Standards Act, or the Illinois minimum wage under the Minimum Wage Law, whichever is more, multiplied by 40 hours. This percentage rate shall be increased by 10% for each spouse and child, not to exceed 100% of the total minimum wage calculation, nor exceed the employee's average weekly wage computed in accordance with the provisions of Section 10, whichever is less.” IL ST CH 820 § 305/8(b).

Respondent shall pay Petitioner temporary total disability benefits of \$1,848.20/week for 52 weeks, commencing April 15, 2023 through April 20, 2023, June 29, 2023 through June 28, 2024, as provided in Section 8(b) of the Act.

As to TPD benefits, Petitioner testified that after returning to work following his April 15, 2023 work injury that he was unable to work the same number of hours or days as he had prior to work injury. This is supported by the timesheets submitted by Respondent. Petitioner worked light-duty during the period of April 21, 2023 through June 29, 2023, therefore, Petitioner should be entitled to benefits for that periods.

“When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working.” 820 § 305/8(a).

Respondent shall pay Petitioner temporary partial disability benefits of \$1,848.20/week for 52 weeks, commencing April 21, 2023 through June 29, 2023, as provided in Section 8(a) of the Act.

Accordingly, the Arbitrator orders that Respondent pay all back owed-TTD, and to pay all TTD which will likely result from Petitioner's continued disability.

IN SUPPORT OF THE ARBITRATOR'S FINDING IN RELATION TO ITEM (M) AS TO WHETHER PENALTIES SHOULD BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent offered the IME report of Dr. Lee to credibly and appropriately contest the issue of causation. Dr. Lee opined that the sports injury prior to the work accident was the injury he attributed to Petitioner's condition. Respondent reasonably relied upon Dr. Lee's report to deny that the work accident caused the need for medical care.

Accordingly, the Arbitrator denies Petitioner's claim for penalties under Sections 8(a), 8(b), 16, 19(k) and 19(l).

IN SUPPORT OF THE ARBITRATOR'S FINDING IN RELATION TO ITEM (O) WHETHER RECOMMENDATION FOR THE ACHILLES TENDON RECONSTRUCTION IS CAUSALLY RELATED TO PETITIONER'S APRIL 15, 2023 WORK INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As stated above, the medical records, expert testimony, and testimony of the Petitioner contained in the record has shown that the need for the Achilles tendon reconstruction surgery was contributed to, at least in part, by Petitioner's April 15, 2023 work injury.

Accordingly, the Arbitrator orders that Respondent authorize and pay for the surgical procedure recommended by Dr. Kane, and any and all treatment reasonably resulting from the surgery.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025512
Case Name	Algena Flourmoy v. Good Sheperd Manor
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0175
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Dean Caras
Respondent Attorney	John Campbell

DATE FILED: 6/4/2026

/s/Stephen Mathis, Commissioner

Signature

24 WC 025512

Page 1

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 <u>Causal connection</u>	☐ Second Injury Fund (§8(e)18)
☐ Modify <u>Choose direction</u>	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALGENA FLOURNOY,

Petitioner,

vs.

NO: 24 WC 025512

GOOD SHEPHERD MANOR,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, and temporary total disability, and being advised in the facts and law, hereby reverses the Decision of the Arbitrator in part, and finds that Petitioner's condition of ill-being after November 26, 2024, is not causally connected to the work related accident of March 2, 2024, for the reasons stated below.

The Commission finds that Petitioner sustained a strain/sprain injury of the low back, and cervical area on March 2, 2024, in a work-related accident. Petitioner was a 64-year-old female who had been employed by Respondent as a direct support caregiver for 20 years. Her job responsibilities included assisting residents with activities of daily living in a group care home environment.

Petitioner testified that on March 2, 2024, she was pivoting a patient out of a recliner to a wheelchair when he began to slide toward the floor. She reached over to grab him and secure him until assistance arrived. Petitioner experienced neck, back and right arm pain that increased in intensity over the following days. She reported the incident to her supervisor in timely manner. The issue of accident was not disputed by Respondent.

24 WC 025512

Page 2

On March 4, 2024, Petitioner sought initial medical care at Riverside Workforce Health for musculoskeletal pain of two days duration. Her complaint was primarily lower back pain with stiffness, muscle spasm and limited range of motion. She gave a consistent history of transferring a patient from a chair to wheelchair when his legs gave out. She supported him to prevent him from falling and felt a pop in her lower back. Petitioner expressed that the pain has increased and that her mid to lower back pain now extended to her hips, and down the back of both legs to her knees.

On physical examination Petitioner was noted to have muscle spasm. Dr. Inczauskis diagnosed her with strain of the muscle, fascia, and tendon of the lower back secondary to over-exertion. Cyclobenzaprine and Medrol Dosepak were prescribed, and Petitioner was placed on work-restrictions with a maximum lift of 10 lbs., no repetitive lifting, no bending, kneeling or squatting, and alternating sit/stand for comfort. She was allowed to return to work with these restrictions and directed to return to clinic for follow-up on March 13, 2024. Petitioner did not return to work and was not recalled to work by Respondent.

Petitioner returned to Riverside Workforce Health on March 13, 2024, as directed. She complained of pain with all range of motion. She denied tingling, weakness, numbness or loss of sensation. The diagnosis of muscle, fascia, and tendon strain remained. Dr. Inczauskis requested authorization for physical therapy 2-3 times per week for 4 weeks. Dr. Inczauskis continued Petitioner's work restrictions.

The radiology report from an x-ray ordered by Dr. Inczauskis of Petitioner's lumbar spine demonstrated normal curvature, normal alignment and normal disc heights. Vertebral body heights were also reported as normal. The report described some mild facet arthropathy throughout Petitioner's mid and lower lumbar spine.

The Commission notes that Petitioner's work restrictions including the 10 lb. maximum lift were not compatible with the physical demands specified by Respondent in the job description, (RX4). Respondent paid Petitioner TTD benefits that continued through November 26, 2024, when the Section 12 report of Dr. Suyari (RX2) was received which found Petitioner to have achieved MMI and able to return to full-duty employment.

Petitioner returned to Riverside Workforce Health for further follow-up on April 4, 2024, complaining of increased pain which she rated as 10/10, and described as constant. According to Petitioner this pain was aggravated by bending and moving around. She was encouraged to take ibuprofen or Tylenol prior to PT sessions. Petitioner's work restrictions were continued, and her diagnosis remained strain of the lower back.

Petitioner reported some improvement of symptoms on April 19, 2024. Physical therapy notes reflected improvements in range of motion and performance. The clinical note describes the

24 WC 025512

Page 3

pain as primarily over the levels of L3 and L5. She was directed to continue physical therapy and return to clinic in two weeks. Petitioner's work restrictions were continued by Dr. Inczauskis.

On May 6, 2024, Dr. Inczauskis ordered an MRI of the lumbar spine based upon her review of physical therapy notes that reported 10/10 pain with minimal improvement. Petitioner reported that medication was no longer beneficial and that she had pain with all range of motion. On this date it is noted that Petitioner now presented with an antalgic gait. The diagnosis was muscle strain in the lower back. Petitioner's work restrictions were continued.

On May 14, 2024, Petitioner had an initial consultation with Dr. Kermit Muhammad, M.D. at Illinois Bone & Joint Institute for bilateral hand pain with complaints of numbness and tingling in the thumb, index and middle finger. She reported no prior treatment for this condition and stated that her symptoms had been present "for a while". Dr. Muhammad ordered an EMG which was performed on May 21, 2024, and revealed that Petitioner had mild left carpal tunnel syndrome, and chronic right C7 radiculopathy. There was no evidence of right carpal tunnel syndrome or evidence of peripheral neuropathy involving the right upper extremity.

The Commission notes that there is no clinical note in the Riverside Workforce Health record documenting any complaints of hand pain, shoulder pain, or numbness in the upper extremities.

Petitioner's upper extremity symptoms were primarily right sided. On May 28, 2024, Petitioner declined any surgical referral from Illinois Bone & Joint stating that she already had an upcoming appointment with a back surgeon. At her final appointment Petitioner was directed to follow up with Illinois Bone & Joint as needed. Petitioner did not return to Illinois Bone & Joint.

Petitioner returned to Dr. Inczauskis at Riverside Workforce Health on May 20, 2024, for continuing follow up. She reported that she had constant 8/10 pain that was aggravated by sitting for long periods. Dr. Inczauskis discussed the MRI results with Petitioner, and a plan was made for referral to Dr. Rugino, a neurosurgeon at Riverside Medical Group. The referral was made on the basis of an abnormal MRI and Petitioner's continuing complaints of back pain.

Petitioner's initial appointment at Riverside Medical Group for a neurosurgical consultation was on May 29, 2024. She was seen by Karim Bouferrache, P.A. Petitioner presented with imaging of her lower back and the EMG of her upper extremities for evaluation of neck and right arm pain as well as low back with bilateral leg pain following her work-related injury. She gave a consistent report of her accident of March 2, 2024.

Specifically, Petitioner reported that pain is located in her lower back and radiates to both thighs posteriorly stopping at the knee. She also reported that she had neck pain radiating to the right arm into all fingers of her hand. She also reported that she experiences cramping in her right hand and fingers. Petitioner stated that she tried a course of physical therapy for her lower back that aggravated her pain.

On physical examination muscle strength in both upper and lower extremities was 5/5, sensation was intact and reflexes were normal and symmetrical. The diagnosis given was neck pain and chronic bilateral lower back pain with bilateral sciatica. Dr. Rugino endorsed PA Bouferrache's findings and diagnosis. The EMG was reviewed and confirmed radiculopathy on the right at C7 as well as mild carpal tunnel syndrome. Petitioner was also noted to have axial low back pain with referred pain to both extremities.

PA Bouferrache ordered a dynamic x-ray and MRI of the cervical spine to rule out/in nerve impingement of the right C7. Review of the MRI of the lumbar spine performed previously showed mild spondylitic changes with facet arthropathy, Petitioner was referred to pain management for possible injections. She was directed to return for follow up in 8 weeks after testing.

PA Bouferrache imposed work restrictions stating that Petitioner was completely incapacitated pending work up and to return for follow up in 8 weeks. Petitioner returned to clinic for follow up on July 24, 2024. She reported no change in her symptoms since the last visit. PA Bouferrache's progress note indicated that on review of the imaging of the cervical spine that he agreed with the radiologist's interpretation. He recommended injections for both the cervical and lumbar spine. Petitioner was encouraged to continue home exercise to relax her paraspinal muscles and restore normal lordosis to ease her spinal and radicular pain. No further neurosurgical treatment was recommended, and she was referred to Dr. Hussain in the pain clinic for evaluation. She was kept off work pending her evaluation by Dr. Hussain.

Petitioner was initially seen by Dr. Hussain, a pain specialist at Riverside Medical Group on August 2, 2024. Her history of present illness and findings on physical examination were consistent. Dr. Hussain assessed Petitioner as having strain of the neck muscles with radiculopathy, and lumbar spondylosis with sprain and radiculopathy. Dr. Hussain's plan pending findings on MRI was management with Meloxicam and Gabapentin and follow up in 2 weeks. She was continued off work pending further evaluation.

Petitioner returned to Dr. Hussain on August 30, 2024, following a 4-week course of conservative therapy with Meloxicam. She reported only 10% relief and expressed continuing complaints of neck, shoulder, upper extremity and low back pain. Dr. Hussain's recommendation was to proceed with cervical dural steroid injections to help in resolving symptoms. Petitioner was reluctant to consider injections. She preferred to continue Meloxicam for a couple of weeks longer. She also resisted any referral for neurosurgical consultation. Petitioner rated her pain as being 7-8/10.

At Petitioner's request Dr. Hussain prescribed an additional 2-week course of Meloxicam. Petitioner also requested an extension of her off-work note. Dr. Hussain advised Petitioner that he would extend her off-work status for another 2 weeks. However, on the follow-up appointment they would need to discuss her going back to work even with restrictions. Dr. Hussain provided an extension of Petitioner's off work restrictions pending further evaluation.

24 WC 025512

Page 5

Petitioner returned to Dr. Hussain on October 4, 2024, following an additional 4-week course of Meloxicam. Petitioner reported an improvement in symptoms of only 5-10%. She continued to complain of low back and lower extremity pain with even mild activity. Dr. Hussain renewed his recommendation to proceed with epidural injections or alternatively surgical evaluation to help with her symptoms. Petitioner refused both options and requested another extension of her off-work status stating that she is unable to tolerate standing for 20 minutes or lifting anything over 10 lbs.

Dr. Hussain alternatively recommended Petitioner to undergo a Functional Capacity Evaluation to better evaluate her level of exertion tolerance. He advised Petitioner that he would extend her off work status for 2 weeks until the FCE is performed. Petitioner agreed to proceed with the FCE but refused to consider returning to work. Additionally, Dr. Hussain suggested an additional course of physical therapy which Petitioner refused as being too painful.

Dr. Hussain's plan was to send Petitioner for a Functional Capacity Evaluation and re-evaluate following completion of the FCE. He extended her off-work status for 2 weeks to allow for the completion of the FCE at her request. Dr. Hussain provided a script for the Functional Capacity Evaluation and a note for the 2 week off work extension.

Petitioner did not return to Dr. Hussain for any further care. On review Petitioner argued in her brief that Dr. Hussain was unable to identify the source of Petitioner's pain "because Respondent refused to pay for an FCE". The Commission notes that there is no evidence in the record supporting this assertion. It is uncontested that Petitioner continued to receive TTD benefits throughout this period until November 26, 2024, when Respondent received the report of Section 12 examiner Dr. Suyari. It is further uncontested that at no time did Respondent recall Petitioner to return to work either with or without accommodation.

On October 21, 2024, Petitioner presented at First Care Family Clinic-Walk-In Urgent Care. She was seen by Dr. Farooqi with complaints of urinary odor of a couple of weeks duration. She also requested a work note for a previous back injury and expressed that she was waiting for approval for a Functional Capacity Evaluation and had an upcoming appointment on October 28th for a second medical opinion with workers' compensation. The Commission notes that October 28, 2024, is the date the Section 12 evaluation with Dr. Suyari was performed at the request of Respondent.

Dr. Farooqi diagnosed dysuria and dorsalgia. He provided Petitioner with the off-work note she requested specifying return to work on November 1, 2024.

On October 28, 2024, Dr. Suyari performed a Section 12 examination of Petitioner. All testing conducted further to the physical examination was reported as normal. X-rays were performed in the office which demonstrated grade 1 spondylolisthesis at L4-5 with mild

degenerative disk disease. Dr. Suyari noted limited rotation to the right of Petitioner's neck and mild tenderness to palpation over her lumbar and cervical spine.

Dr. Suyari reviewed Petitioner's medical records and prior imaging in addition to his physical examination. Dr. Suyari expressed the opinion that Petitioner had sustained a soft tissue muscular strain of the cervical and lumbar spine which had resolved. He acknowledged that the soft tissue strain was work-related. In his opinion the treatment to date was necessary and reasonable except for the EMG performed at Illinois Bone & Joint which he opined was not indicated. The Commission views the evidence differently and finds that the EMG was reasonable and necessary in that it revealed a somatic basis for Petitioner's right upper extremity and shoulder pain.

In Dr. Suyari's opinion Petitioner required no further treatment or diagnostic testing for her lumbar or cervical spine. Petitioner's current diagnosis of resolved strain of the cervical and lumbar spine is work-related. He further opined that Petitioner is able to work full-duty without restrictions as the soft tissue strain is resolved. The bases for his opinions are that Petitioner presents with subjective complaints of neck or low back pain but without bilateral lower extremity or upper extremity dysesthesias and has a normal neurologic examination. He therefore finds that she sustained a soft tissue injury that has resolved. Dr. Suyari also based his opinion concerning her work release upon Respondent's job description (RX4) which he reviewed.

Petitioner continued her treatment at First Care with Dr. Farooqi on November 25, 2024, with continuing complaints of back pain down her legs bilaterally and intermittent tingling and numbness in her left outer thigh. This is the first time Petitioner reported tingling and numbness in her thigh. She reported that she was referred to another physician at Rush and was awaiting an MRI in Joliet pending insurance approval. The Commission notes that this pending referral and imaging is not reflected in the evidence adduced at trial.

Dr. Farooqi performed a physical examination and documented tenderness to palpation on Petitioner's thoracic, lumbar and sacral spine with poor hip rotation. He charted positive straight leg raise bilaterally. Petitioner was unable to squat, bend at the waist, twist, turn, heel walk or toe walk. He found her deep tendon reflexes to be within normal limits.

Dr. Farooqi diagnosed "polyneuropathy in diseases classified elsewhere" and cervical disc disorder with radiculopathy. He provided an off work note "of unknown duration", and a new referral to physical therapy. She was directed to follow up in 2 weeks

Petitioner returned to Dr. Farooqi on December 5, 2024, for follow up of her back pain. She reported that she had been cleared to return to work full duty by Dr. Suyari. She complained to Dr. Farooqi about her physical limitations and her inability to perform her job duties given her back pain. She reported that she takes Valium nightly for sleep but cannot use it during the day due to drowsiness.

24 WC 025512

Page 7

Dr. Farooqi performed a physical examination. He recommended a fit for duty evaluation based upon Petitioner's actual job description. The Commission notes that Dr. Farooqi's recommendation for a fit for duty evaluation is the same as the treatment plan formed by Dr. Hussain at Riverside Medical Group on October 4, 2024. There is no evidence in the record that Petitioner pursued either recommendation. Petitioner did not return to Dr. Farooqi after this appointment.

On January 29, 2025, Petitioner initiated care at Gold Coast Spine and Hand Surgery and Dr. Fink. Petitioner indicated that she had gotten the referral to Dr. Fink from her son. She reported a consistent history concerning her work-related accident. Her physical examination was positive for lumbar spine tenderness and left paravertebral muscle tenderness. Straight leg raising test was positive on the left. After reviewing Petitioner's recital of her course of treatment, Dr. Fink also recommended transforaminal lumbar epidural steroid injections. Petitioner advised that she wanted to think about this treatment option. She stated she would return to clinic in 6 weeks.

Petitioner returned to Dr. Fink on March 13, 2025. She complained of low back pain radiating to her left buttock and left leg. Dr. Fink again recommended lumbar epidural spinal injections at L3-4, L4-5, and L5-S1. He provided work restrictions of 10 lb. maximum lift and minimal sitting and standing. Dr. Fink's note required that these injections be scheduled for April 7, 2025.

On April 7, 2025, Petitioner underwent a series of bilateral lumbar epidural spinal injections at L3-4, L4-5, and L5-S1 left side. She also had right and left side lower lumbar trigger point injections. Dr. Fink placed work restrictions of no lifting April 7, 2025, through June 18, 2025. She was also restricted to minimal walking and standing by Dr. Fink.

On April 10, 2025, Dr. Fink charted that Petitioner had undergone an ultrasound ordered by a physician in Kankakee to rule out a deep vein thrombosis. He prescribed Tylenol No. 3 and instructed Petitioner to return for follow up in 4 weeks.

Petitioner returned on May 7, 2025, and reported that a possible DVT had been ruled out. On examination Petitioner displayed a positive bilateral straight leg raising. She reported some improvement following the first set of TLESI injections but wanted to wait before she had a second set. Dr. Fink assessed a bulging lumbar disc and L4 bilateral neuroforaminal narrowing. He extended Petitioner's off work restrictions. She was directed to return for follow up in 4 weeks.

Petitioner returned for follow up with Dr. Fink on June 25, 2025. Dr. Fink's clinical note documents positive bilateral straight leg raising but noted improvement since the last examination. Petitioner reported improvement following the first set of TFLESI injections. She declined another set of injections and informed Dr. Fink that she wanted to be discharged from care with permanent work restrictions. Further to this request Dr. Fink discharged Petitioner with permanent restrictions of no lifting over 10 lbs., sitting job, minimum walking, and no bending or twisting at waist.

At hearing Respondent called Michelle Taylor, the Human Resources Director at Good Shepherd Manor as a witness. Ms. Taylor testified that she took over as HR director on September 19, 2024. Ms. Taylor manages workers' compensation issues for Respondent. She testified that she telephoned Petitioner when she took over her position to get some background on her work status. During the course of the telephone conversation Petitioner advised Ms. Taylor that she disagreed with Dr. Suyari's opinion in the Section 12 report that she could return to work. According to Ms. Taylor, Petitioner never communicated that she wanted to return to work.

On cross examination Ms. Taylor testified that she emailed Petitioner on a monthly basis when she received her updated work restrictions to acknowledge receipt thereof. Although Ms. Taylor denied receiving permanent restrictions from Petitioner, she did acknowledge receipt of a note from Dr. Fink dated June 25, 2025, allowing Petitioner to return to regular duties with a restriction on lifting over 10 lbs. Ms. Taylor acknowledged that she has not offered Petitioner a return to work within her restrictions. She testified that if Petitioner provided an ADA request for accommodation that she would have to act on it.

The Commission notes that the evidence establishes that Dr. Inczauskis, Dr. Rugino, PA Boufarrache, Dr. Hussain, Dr Farooqi, and Respondent's Section 12 examiner Dr. Suyari, all diagnosed Petitioner with strain/sprain injury to the lumbar spine, and neck, overlying chronic degenerative disc disease. Petitioner underwent a prolonged course of conservative treatment from numerous specialists extending from March 4, 2024, through October 2024 that included medication, ice, rest and activity restrictions, and physical therapy.

Throughout the course of medical treatment with various physicians Petitioner continually complained of subjective symptoms that were not improving. Nevertheless, Petitioner resisted any intervention or medical treatment aimed at improving her symptoms and allowing her to return to work. The one constant that persisted throughout Petitioner's course of care was her determination to remain off work.

When encouraged to resume physical therapy Petitioner declined on the basis that physical therapy was too painful. Petitioner was offered cervical epidural spinal injections by Dr. Hussain, a pain management specialist in August 2024 to treat her pain. Petitioner declined treatment. Instead, Petitioner requested several extensions of her off work status from Dr. Hussain. She expressed her preference for prescription medication and work restrictions even though she reported that she was not getting relief or improvement in her symptoms.

Dr. Hussain offered Petitioner a referral to a neurosurgeon for consultation. Petitioner declined the referral. Eventually, on October 4, 2024, Dr. Hussain again recommended epidural steroid injections to alleviate pain and Petitioner again refused treatment. Dr. Hussain repeated his recommendation for additional physical therapy which Petitioner also refused. Finally, Dr. Hussain informed Petitioner that he would not continue to keep Petitioner off work and advised that he would order a Functional Capacity Evaluation to better assess her level of exertion tolerance. He counselled Petitioner that she would have to return to work even if subject to

24 WC 025512

Page 9

restrictions. Petitioner agreed to the recommended test but still refused to return to work. Petitioner did not undergo the Functional Capacity Evaluation, and she never returned to Dr. Hussain.

Petitioner next sought treatment at First Care Family Clinic- Walk-In Urgent Care with Dr. Farooqi on October 21, 2024. She presented with complaints of back pain and a bad smell in her urine. She requested a work note for a previous back injury. Dr. Farooqi provided the requested off work note to Petitioner, extending her off work status until November 1, 2024. The Commission notes that Respondent continued to pay TTD benefits to Petitioner throughout this time.

On October 28, 2024, Petitioner underwent a Section 12 examination with Dr. Aresh Suyari, M.D. at the request of Respondent. Dr. Suyari is a board-certified orthopedic surgeon with a specialization in spine surgery. Dr. Suyari testified that he reviewed Petitioner's medical records. He opined that Petitioner had sustained a work-related accident on March 2, 2024, and had sustained a sprain/sprain soft tissue injury to her cervical and lumbar spine and right shoulder. Dr. Suyari stated the opinion that the strain/sprain injury was causally connected to Petitioner's work accident.

Dr. Suyari endorsed the treatment with medication and physical therapy which Petitioner received for the soft tissue muscular strain. This treatment would have been reasonable and necessary for a period of 4-6 weeks following the work accident. He found that the medical treatment Petitioner provided was reasonable and necessary with the exception of the EMG which Dr. Suyari believed was not indicated.

In Dr. Suyari's opinion Petitioner had achieved MMI at the time of his evaluation. He further stated that MMI would have been reached 4-6 weeks following the work injury of March 2, 2024. Dr. Suyari found that Petitioner needed no further diagnostic testing or treatment. He reviewed the job description introduced into evidence by Respondent and concluded that Petitioner is able to return to work full-duty and without restrictions. Dr. Suyari testified that he held these opinions to a reasonable degree of medical certainty. The Commission finds the opinions expressed by Dr. Suyari persuasive and consistent with the opinions of Petitioner's many treating physicians. The only opinion expressed by Dr. Suyari that the Commission rejects is his finding that the EMG performed at Illinois Bone & Joint was not indicated.

On November 25, 2024, Petitioner returned to Dr. Farooqi at First Care Family Clinic complaining of back pain and reported that she had been seen by a workers' compensation doctor but would like a second opinion.

Petitioner reported lower back pain that radiated down both legs. She additionally reported intermittent numbness and tingling to left outer thigh and bilateral legs. Dr. Farooqi diagnosed "polyneuropathy" and cervical disc disorder with radiculopathy. She was provided another off work note and return to clinic in 2 weeks.

Petitioner's final appointment with Dr. Farooqi took place on December 5, 2024, at which time he recommended a fit for duty evaluation based upon her job description followed by return to work. Petitioner never returned to Dr. Farooqi.

On January 29, 2025, Petitioner initiated treatment with Dr. Fink at Gold Coast Spine and Hand Surgery. Her presenting complaints were consistent with those she had expressed previously. Dr. Fink recommended lumbar epidural steroid injections which she deferred. Notably she did not express cervical complaints to Dr. Fink. Petitioner received an off work note and did not return to clinic until March 13, 2025.

Petitioner underwent LESI injections at bilateral L3-4, bilateral L4-5, bilateral L5-S1, and trigger point injections, and lower lumbar trigger point injections performed by Dr. Fink on April 7, 2025. She reported some improvement in her symptoms but declined to undergo the second set of injections that were recommended by Dr. Fink. She was continued off duty by Dr. Fink.

On June 26, 2025, Petitioner returned to Dr. Fink again declining further treatment. Petitioner requested discharge from treatment with permanent restrictions of no lifting over 10 lbs., sedentary work only, minimum walking and no bending or twisting from waist. Dr. Fink provided these permanent restrictions at Petitioner's request. These restrictions remained in place until the time this matter was heard by the Arbitrator on August 15, 2025.

The Arbitrator's decision was filed on October 7, 2025. Respondent filed a timely Petition for Review. The Commission notes that Respondent does not seek review of the permanent partial disability award. Furthermore, the Request for Hearing reflects that Respondent disputes TTD after November 26, 2024. Respondent also contests liability for medical expenses incurred after November 26, 2024.

Respondent asserts liability for medical expenses incurred after November 26, 2024, should be denied based upon the determination of Dr. Suyari that Petitioner had achieved MMI. Respondent further maintains that Petitioner had exhausted her two choices of physicians by the time she sought treatment from Dr. Fink. The Commission finds Petitioner reached MMI on November 26, 2024, prior to seeing Dr. Fink. For this reason, the Commission need not and does not make a finding on whether Petitioner exhausted her choice of two doctors.

The burden of proof for every element of the prima facie case rests with Petitioner. In this case the issue of accident is not disputed. A claimant must establish his current condition of ill-being is causally related to his asserted accident. In this case Petitioner's continued resistance to treatment contradicts her subjective complaints of ongoing severe pain and tends to support Dr. Suyari's opinion that she suffered a strain/sprain soft tissue injury which would have resolved within a couple of months following the incident.

Petitioner did not finally consent to Dr. Fink's recommended treatment with injections until her benefits had been terminated and she was imminently facing a return to work. Following the

24 WC 025512

Page 11

injections Petitioner terminated treatment with Dr. Fink and requested discharge with permanent restrictions. The Arbitrator's decision attributes an "opinion" by Dr. Fink that Petitioner "could not be fully discharged from treatment without permanent restrictions..." The Commission finds no evidence of such an opinion attributable to Dr. Fink. It appears rather that Petitioner requested discharge with permanent restrictions.

The Commission, for the reasons stated above, finds the opinion of Dr. Suyari on the issue of causal connection to be persuasive and on that basis reverses the Arbitrator's award of medical expenses incurred after November 26, 2024. Furthermore, the Commission reverses the Arbitrator's award of temporary total disability benefits from November 26, 2024, to June 25, 2025, on the basis that Petitioner achieved MMI based upon the opinion of Dr. Suyari, and that there was no causal connection between Petitioner's work injury sustained March 2, 2024, and her condition of ill-being after November 26, 2024.

The Commission finds the Petitioner is entitled to TTD from March 3, 2024, through November 26, 2024, representing 38 1/7 weeks. Petitioner is entitled to medical expenses incurred from March 4, 2024, up to the date of November 26, 2024, which have been previously paid by Respondent. The Commission reverses the Arbitrator's award of unpaid medical expenses incurred from Gold Coast Orthopedics & Spine for \$5,215.43; Lakeshore Surgery Center for \$2,009.19; Lakeshore Surgery Center Physicians for \$189.78; and Western Touhy Anesthesia for \$760.48. The Commission further reverses the Arbitrator's award of TTD benefits commencing November 26, 2024, through August 15, 2025, for the reasons stated above.

The Commission affirms in part the Decision of the Arbitrator and finds Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person as a whole, pursuant to Section 8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 10, 2025, is hereby reversed in part and affirmed in part for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner sustained lumbar, and cervical strain/sprain while employed at Good Shepherd Manor on March 2, 2024. Petitioner sustained a work-related accident that arose out of her employment and is compensable. The Commission finds, based upon the opinion of Dr. Suyari that Petitioner achieved MMI on November 26, 2024, and therefore Petitioner was not entitled to TTD benefits or medical expenses incurred after November 26, 2024, on the basis that Petitioner failed to prove causal connection.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to TTD benefits commencing March 3, 2024, through November 26, 2024, in the amount of \$578.62 per week pursuant to Section 8(b) of the Act, and that all TTD benefits owed have been paid to Petitioner by Respondent. The Arbitrator's award of further TTD benefits commencing November 26, 2024, through June 25, 2025, is hereby reversed.

24 WC 025512

Page 12

IT IS FURTHER ORDERED BY THE COMMISSON that all reasonable and necessary medical expenses incurred commencing March 4, 2024, though November 26, 2024, have been paid by Respondent. The Commission reverses the Arbitrator's award of additional medical expenses incurred after November 26, 2024, based upon the finding that they are not causally connected to the work injury sustained on March 2, 2024.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person as a whole, pursuant to Section 8(d)(2) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$15,000.00. 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.

June 4, 2026

SJM/msb

o: 4/21/26

44

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Amylee H. Simonovich

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026177
Case Name	Vivian Marisol Albavera v. El Nuevo Vallarta Sports Bar & Grill Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0176
Number of Pages of Decision	4
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jonathan Schlack
Respondent Attorney	Michael Geary

DATE FILED: 6/10/2026

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VIVIAN MARISOL ALBAVERA,

Petitioner,

vs.

NO: 23 WC 26177

EL NUEVO VALLARTA SPORTS BAR,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's Petition for Review of the Arbitrator's October 15, 2025 Order dismissing her claim with prejudice. Notice given to all parties, the Commission, after considering the issues and being advised of the facts and law, vacates the Arbitrator's Order and remands this matter to the Arbitrator for further proceedings.

PROCEDURAL HISTORY

On October 3, 2023, Petitioner filed an Application for Adjustment of Claim alleging a September 18, 2023 injury while in the employ of Respondent. The claim was assigned case number 23 WC 26177.

On November 14, 2024, the case was dismissed for want of prosecution by Arbitrator Bae.

On January 10, 2025, Petitioner filed a timely Petition to Reinstate. The Petition includes the following allegation:

This matter was set for hearing on November 14, 2024 before Arbitrator Bae. Petitioner has a compensable claim and has not failed to prosecute her claim. However, the claim was dismissed due to Petitioner's attorney's failure to appear due to a docketing error. Therefore, we respectfully request that this claim be reinstated and restored to the call.

On January 30, 2025, Arbitrator Bae granted reinstatement. No record of the reinstatement proceeding was made, indicating the petition was uncontested. See Commission Rule 9020.90 (“A record shall be made of a hearing on any contested Petition.”) *50 Ill. Admin. Code 9020.90(c)*.

On March 13, 2025, the case was dismissed for want of prosecution a second time.

On May 7, 2025, Petitioner filed a timely Petition to Reinstate. The Petition contains the following allegation:

This matter was set for a pre trial via Webex on March 13, 2025 before Arbitrator Bae. However, Petitioner’s attorney was unable to appear [due] to a docketing error. Petitioner has a compensable claim, and has not failed to prosecute her claim. Reinstating this claim will not prejudice Respondent in any way. Therefore, we respectfully request that this claim be reinstated and restored to the call.

On July 31, 2025, Arbitrator Bae granted reinstatement. No record of the reinstatement proceeding was made. *50 Ill. Admin. Code 9020.90(c)*.

On August 25, 2025, the matter was set for trial on October 15, 2025.

On October 15, 2025, when Petitioner’s Counsel failed to appear for trial, Arbitrator Bae entered “an order for DWP with prejudice.” T. 6.

Petitioner did not file a Petition to Reinstate. Rather, on November 14, 2025, Petitioner filed a Petition for Review of the Arbitrator’s October 15, 2025 dismissal of the claim “with prejudice”. Therein, however, Petitioner identified the issue to be addressed by the Commission as “Denial [motion] to reinstate.”

CONCLUSIONS OF LAW

As an administrative agency, the Commission’s powers are limited to those granted by the legislature and any action taken by an agency must be authorized specifically by statute; when an agency acts outside its specific statutory authority, it is said to have acted without “jurisdiction” and its actions are void. *Daniels v. Industrial Commission*, 201 Ill.2d 160, 165 (2002). The Commission observes there is no provision in the Illinois Workers’ Compensation Act that allows for a claim to be dismissed with prejudice. Moreover, while Commission Rule 9020.60 grants arbitrators the authority to dismiss a claim for want of prosecution when a party fails to appear for trial, the Rule does not permit a dismissal “with prejudice” and, further, the Rule references “Cases on File 3 or More Years”:

In all cases that have been on file at the Commission for 3 years or more, the parties or their attorneys must be present at each status call at which the case appears. The case will be set for trial or dismissed unless a written request has been made to continue the case for good cause. *50 Ill. Admin. Code 9020.60(b)(2)(D)(i)* (Emphasis added).

The Commission emphasizes Petitioner's claim was only two years old and had not reached red line status pursuant to Commission Rule 9020.60. *Id.*

Furthermore, following Petitioner's failure to appear for trial on October 15, 2025, an order of dismissal for want of prosecution for failure to appear for trial should have been entered once again with Petitioner thereafter having 60 days to request reinstatement. A hearing should then have been held on the Petition and if so inclined, the Arbitrator could have denied the request to reinstate on the record pursuant to Rule 9020.90. *50 Ill. Admin. Code 9020.90(c)*. Following the denial of Petitioner's request to reinstate, Petitioner could then seek review by the Commission of the Arbitrator's order denying reinstatement. The Commission is aware that although the handling of this matter has proven frustrating for the Arbitrator, Respondent, and for the Petitioner herself, the proper procedure was not followed here. Accordingly, the Commission vacates the Arbitrator's order of dismissal with prejudice and remands this matter to the Arbitrator for further proceedings.

IT IS THEREFORE ORDERED BY THE COMMISSION that the October 15, 2025 Order dismissing the claim with prejudice is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with the procedures outlined in the Act and the Commission Rules.

June 10, 2026

RAW/mck

O: 4/22/26

43

/s/ *Raychel A. Wesley*

/s/ *Carolyn M. Doherty*

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028413
Case Name	Jessy Vargas v. Cox Landscaping, LLC.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0177
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Joseph Blewitt

DATE FILED: 6/10/2026

/s/Maria Portela, Commissioner

Signature

22 WC 28413

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JESSY VARGAS,

Petitioner,

vs.

NO: 22 WC 28413

COX LANDSCAPING, LLC,

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

The Commission affirms and adopts the Arbitrator's Decision but slightly modifies the Arbitrator's calculation of the average weekly wage. As Petitioner's rate for total temporary disability benefits is based on a statutory minimum, the value of the benefits as awarded by the Arbitrator remain the same. The Commission also clarifies that although the Respondent is given a credit for the medical bills paid, this credit is not pursuant to Section 8(j) of the Act.

With respect to the calculation of the average weekly wage, the Commission modifies the Arbitrator's Decision as follows: The Commission agrees with the Arbitrator's analysis that the calculation is based on a weeks and parts analysis pursuant to Section 10 of the Act. However, the Commission finds that the Arbitrator inadvertently included overtime wages and miscalculated the total number of days worked. Based on Px15 and Rx5, Petitioner worked for a period of June 23, 2022 through the date of accident on October 24, 2022 – a period of 17-5/7 weeks. Petitioner credibly testified that he began working for Respondent on June 23, 2022. (T. 16) The parties – though

disagreeing on the termination date of temporary total disability benefits (“TTD”) – pursuant to the Request for Hearing, stipulated that the TTD should begin on October 25, 2022, the day after the work accident. (ArbX1) The Arbitrator based the average weekly wage calculation on Petitioner’s total earnings of \$11,504.75 per Rx5. However, that number included \$107.25 in overtime wages which should have been omitted. Accordingly, the calculation of the average weekly wage should have been based on earnings of \$11,397.50. Based on the adjusted weeks and parts, and adjusted total wages, (Dividing \$11,397.50 by 17-5/7 weeks) the correct average weekly wage is \$643.41. The TTD amount remains at \$480.00 per week based on the statutory minimum for a claimant with a spouse and 3 dependent children.

Additionally, the Commission affirms the award of medical expenses and the credit awarded for same. The Commission finds that the Respondent is entitled to a credit of \$34,573.91 for medical expenses paid pursuant to Rx3. The Commission notes that in the Order section of the Arbitrator’s Decision, the credit was awarded pursuant to Section 8(j). However, there is no evidence in the record that the employer provided health insurance to Petitioner which covered any of his medical expenses. The Commission agrees with the Arbitrator that the Respondent is entitled to the credit, but the portion of the sentence in the Order Section of the Arbitrator’s Decision, “as provided in Section 8(j) of the Act”, is stricken.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$480.00 per week for a period of 131-1/7 weeks, October 25, 2022 through April 30, 2025, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given a credit of \$50,468.57 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$110,998.65 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act. Respondent shall be given a credit of \$34,573.91 for medical expenses paid.

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.

22 WC 28413

Page 3

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.

June 10, 2026/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

/s/ Marc Parker

O: 052126

Marc Parker

49

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028413
Case Name	Jessy Vargas v. Cox Landscaping, LLC.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Joseph Blewitt

DATE FILED: 9/25/2025

/s/ Paul Cellini, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 23 2025 3.71%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

JESSY VARGAS

Employee/Petitioner

v.

COX LANDSCAPING

Employer/Respondent

Case # **22** WC **28413**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Kankakee**, on **April 30, 2025** and **Ottawa**, on **June 5, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 24, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$11,504.75**; the average weekly wage was **\$654.75**.

On the date of accident, Petitioner was **35** years of age, *married* with **3** dependent children.

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

Respondent shall be given a credit of **\$50,468.57** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits.

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

ORDER

The Arbitrator finds that the Petitioner's lumbar condition of ill-being is causally related to the October 24, 2022 accident.

Respondent shall pay Petitioner temporary total disability benefits of **\$480.00 per week**, the minimum statutory rate for a claimant with four dependents, for **131-1/7 weeks**, commencing **October 25, 2022 through April 30, 2025**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$50,468.57** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of **\$110,998.65**, as provided in Sections 8(a) and 8.2 of the Act.

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

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

SEPTEMBER 25 2025

STATEMENT OF FACTS

Petitioner Jessy Vargas testified via a Spanish interpreter, Lourdes Soto-Smith.

Petitioner worked for Respondent as a landscaper from 6/23/22 to 10/24/22. He testified he earned \$22 an hour and would work around 40 hours a week, assuming no weather issues. His duties included driving a stand-up lawnmower, carrying a blower with a backpack, and he used his right hand to handle the blower and left hand to drive the mower. On 10/24/22, while backing up on the lawnmower, he went over or into a large hole, fell backwards, and landed on his back onto the leaf blower. He asked a coworker to take him to Respondent's office and he reported the accident to the owner, Mark and that he was in pain.

Petitioner presented to Rush Copley Medical Center that day, reporting back pain at work after falling onto a leaf blower that was on his back with immediate low back pain. Exam noted tenderness to palpation over L4/5 and paraspinal tenderness but was otherwise normal. Lumbar x-ray showed degenerative changes at L5/S1 and no acute fracture. Thoracic x-ray showed no acute fracture. Diagnosis was acute midline low back pain without sciatica. Petitioner felt better after getting medication and was discharged home with Valium and Motrin. He was held off work through 10/26/22 and was to follow up with his primary provider. (Px14).

Petitioner attended physical therapy at Grandview Health Partners from 10/27/22 through 3/27/23. He saw chiropractor Dr. Christ on 10/27/22, who noted the accident, and that Petitioner hyperextended his back and had immediate mid and low back pain into both legs with numbness and tingling. The symptoms were continuing, bilaterally and severe. Diagnosis was intervertebral disc disorders with radiculopathy, spinal enthesopathy, sprain of sacroiliac joint, sprain of ligaments of lumbar spine, sprain of ligaments of thoracic spine, and muscle spasm of the back. Therapy and MRI were ordered, and Petitioner was held off work. Subsequent treatment included electrical muscle stimulation, hot/cold packs, manual therapy, ultrasound, therapeutic exercises, and chiropractic manipulation. (Px2).

Lumbar MRI was completed on 11/8/22 and the impression included a 2-3 mm posterior L4/5 disc protrusion with an annular tear superimposed on facet hypertrophy causing mild to moderate bilateral foraminal stenosis, and a 5-6 mm right paracentral/foraminal L5/S1 disc herniation causing moderate to severe right lateral recess stenosis with abutment of the right S1 nerve root and moderate left foraminal stenosis. Facet hypertrophy contributed to stenosis at this level. There were normal findings from L1 to L3/4. (Px4). On 11/9/22, Dr. Christ noted radiating pain into the left hip, leg, and SI joint. (Px2).

Petitioner presented to Dr. Vargas on 11/18/22 at River North Pain Management for an initial evaluation on referral from Dr. Christ when physical therapy failed. Petitioner reported worsening low back pain since the work accident ("most of the lower back axial pain symptoms continued to steadily progress unrelentingly as it

became associated with progressively worsening lower extremity paresthesia, frank neurological claudication and focalized weakness”). He complained of sharp, stabbing, shooting electrical like lower back pain that radiated into the bilateral buttocks, thighs, calves, ankles, and feet, right greater than left. He had a tingling sensation throughout the L5 and S1 dermatomes. Dr. Vargas found multiple abnormalities on neurologic exam including sensation, reflexes, and strength, which he indicated as consistent with the L5 and S1 levels. Petitioner complained of 9/10 to 10/10 level pain. Neck and upper extremity exams appeared normal. A series of bilateral L4/5 and L5/S1 epidural steroid injections were planned, and a back brace and several medications were prescribed (Flexeril, Gabapentin, Protonix, and Mobic). Possible radiofrequency ablation (RFA) and decompression surgery were also discussed. (Px6).

Petitioner underwent the bilateral epidurals at L4/5 and L5/S1 and selective nerve root blocks with Dr. Vargas at Lakeshore Surgery Center on 12/1/22. These were repeated on 12/22/22. (Px3; Px6).

On 12/7/22, Petitioner underwent a cystoscopy at Rush to evaluate for hematuria based on testicular complaints (“mild intermittent bilateral testicular pain”), and the test showed no evidence of same. It was noted an ultrasound showed a small right hydrocele, bilateral varicoceles, and echogenic foci in the bilateral testes. Noted was an abdominal and pelvic CT scan for a history of hematuria, which was compared to prior films from 1/10/19. There were no concerning findings. (Px13)

On 12/9/22, Petitioner reported pain at Grandview with sitting and numbness and tingling into the left leg with sitting, bending, and walking. An EMG was requested, and Petitioner was continued off work. (Px2).

On 1/4/23, Petitioner returned to Dr. Vargas and reported “no tangible clinical improvement whatsoever” with the injections in either his axial low back pain or radicular symptoms. His pain was at the 6/10 to 7/10 level and the exam findings were essentially the same as before. Dr. Vargas did not believe further injections were indicated and opined Petitioner would be an excellent surgical decompression, and possibly fusion, candidate. He referred Petitioner to neurosurgeon Dr. Erickson for consultation, noting “most clinicians would agree however on performing a provocative lumbar functional discogram with post-discogram CT study.” Medications were continued, and while the Arbitrator did not locate any prior reference to work status in Dr. Vargas’ initial report, here he notes Petitioner should remain off work and that maximum medical improvement (MMI) remained uncertain. (Px6).

Petitioner initially saw Dr. Erickson on 1/6/23, reporting immediate low back pain at the time of his 10/24/22 accident that got worse over the next several days, and also that he injured his left shoulder and neck with left arm numbness and tingling and unusual tingling symptoms in the left leg including all of the toes as well as the sole of the foot. Injections were briefly effective. He had a prior 2008 left shoulder surgery. Petitioner preferred to stand and shifted weight frequently while seated. Neurologic exam was normal. Dr. Erickson’s review of the lumbar MRI showed L4/5 and L5/S1 disc herniations. Petitioner’s postural pain suggested a possible primary segmental injury, but as the exact nature of the injury was not known, Petitioner was referred to Dr. Vargas for a diagnostic lumbar diskogram and post diskogram CT scan. (Px5).

The discogram was performed on 1/12/23 at L2/3, L3/4, L4/5, and L5/S1. Excruciating concordant pain was noted at L4/5 and L5/S1, but not at the other two levels. Radiologic interpretation of the nucleograms indicated annular tears at L4/5 (Grade II to III) and L5/S1 (Grade III to IV) with herniation into the spinal canal and possibly into both neuroforamina yielding neuroforaminal stenosis. (Px3; Px6). Dr. Kuritza’s 1/12/23 post-discogram CT impression confirmed disc herniations at L4/5 and L5/S1, significantly larger at the latter level, with annular tears and extruded nucleus pulposus’ at both levels. Central canal stenosis and mild bilateral foraminal stenosis was noted at L4/5. At L5/S1, the herniation was posterior and right sided with posterior and

right spinal stenosis and right lateral recess stenosis, exacerbated by facet arthrosis and ligamentum flava hypertrophy. (Px6).

Petitioner also underwent an updated lumbar MRI on 1/13/23. The impression at L5/S1 was an 8–9 mm posterior and right-sided disc herniation with an extruded nucleus pulposus with an annular tear with posterior and right-sided spinal stenosis and right lateral recess narrowing, exacerbated by some facet arthrosis and ligamentum flava hypertrophy. At L4/5, it showed a 3–4 mm central posterior disc herniation with an extruded nucleus pulposus and annular tear causing central canal stenosis and mild bilateral neuroforaminal narrowing. (Px4).

Petitioner underwent EMG testing on 1/18/23 based on complaints of low back pain into the left leg with paresthesias. Referral was noted to be from “Karwowski”. Dr. Arayan’s exam indicated equal sensation in the bilateral lower extremities with 5/5 strength. The testing was normal with no evidence of left leg radiculopathy or peripheral neuropathy. Dr. Arayan noted that normal EMG could not exclude intermittent nerve compression or pure sensory radiculitis. (Px2; Px13).

Dr. Erickson reviewed the discogram results and the CT films on 2/3/23 and, noting painful instability at L4/5 and L5/S1, he opined Petitioner was unlikely to improve with further conservative treatment and recommended minimally invasive lumbar fusion surgery. Surgical consideration was planned if Petitioner didn’t improve with prescribed physical therapy and a back brace over the next three weeks. (Px5).

On 2/8/23, Respondent had Petitioner evaluated pursuant to Section 12 by orthopedic surgeon Dr. Lami. He conducted a physical examination and reviewed the Petitioner’s medical records. He noted that Petitioner was referred to Grandview Health Partners by his attorney. Petitioner reported that two months of therapy and two back injections provided no relief, and that he had significant pain and had to use a cane for 4 days after discogram. Petitioner reported 10/10 level pain at the time of the 10/24/22 accident and almost 10/10 at the time of the exam, with Dr. Lami explaining the meaning of pain levels to him. He documented that Petitioner described multiple areas of pain involving the left side of his back from the scapula to the lower back, entire left arm, his lower back from right to left, pelvis and entire left leg both anteriorly and posteriorly. He denied right-sided symptoms. Neurological exam was normal. Dr. Lami’s review of the 11/8/22 lumbar MRI films reflected L4 to S1 disc desiccation but maintained disc heights, no fractures, and no spondylolisthesis. He noted a right L5/S1 disc protrusion and a central, slightly left-sided disc protrusion at L4/5 with no central canal stenosis and preexisting degenerative findings from L4 to S1. He also noted the MRI was performed on a “low-field machine.” He opined the 12/7/22 Rush evaluation for testicular pain was unrelated to the work accident. In response to specific questions from Respondent, Dr. Lami opined Petitioner’s work related diagnosis was back contusion and that he had reached MMI within 4 to 6 weeks of the accident. Petitioner denied prior back problems. Dr. Lami opined that Petitioner’s lumbar condition was unrelated to the work injury, given time passage, imaging, which failed to show acute traumatic findings, normal neuro exam, and normal EMG testing. Dr. Lami opined that the discogram with Dr. Vargas was performed incorrectly, while the test itself is “extremely controversial”, noting Petitioner’s reporting of increased pain and cane use. Dr. Lami denied a work related aggravation of the preexisting lumbar condition, as there were no radicular findings corresponding to L4/5 and L5/S1 clinically or on exam and the unremarkable EMG. He believed chiropractic treatment was reasonable for 3 to 4 weeks, as was the MRI, but he disputed the reasonableness of the epidural injections and discogram, opining L2/3 and L3/4 were injected “for no apparent reason.” No further treatment was needed, and Petitioner had no objective evidence to support permanent partial disability. (Rx1).

On 2/13/23, Petitioner noted at Grandview Health that he had less pain with activity but was worse after the activity. He was improving with activities but still performing them with pain. The left side remained worse than the right. (Px2).

On 3/20/23, Dr. Erickson documented that Petitioner's pain pattern and intensity had not changed, currently at an 8/10 to 9/10 pain level. He preferred to stand and lean forward to avoid back pain, however he did note some pain reduction and increased standing tolerance when using the lumbar brace. Surgery continued to be recommended given no improvement with conservative treatment, with Dr. Erickson noting he hadn't yet seen Dr. Lami's report. He opined the MRI, CT, and discogram pointed to the L4/5 and L5/S1 levels as pain generators. Petitioner's back pain was much worse than the associated leg pain, suggesting painful instability of the segments between L4 and S1. (Px5).

At the last visit with Grandview Health on 3/27/23, it was noted that Petitioner presented to continue therapy at a reduced frequency to manage his low back pain pending surgical approval. He reported 4/10 to 5/10 pain at rest, 8/10 to 9/10 when active. (Px2).

On 9/17/23, Petitioner underwent a repeat lumbar MRI at Rush and the results indicated mild disc height loss, disc bulging, and bilateral facet disease at L4/5. There was moderate disc disease with broad based disc at L5/S1, tiny focal right disc protrusion, mild bilateral facet disease and hypertrophy, and mild bilateral left greater than right foraminal stenosis. (Px11).

Petitioner saw orthopedic surgeon Dr. Goldberg at Rush on 9/18/23 for an independent medical examination that appears to have been agreed upon between both parties (see Px16). Petitioner reported when he fell on his back on 10/24/22 he developed low back pain into the right side, and intermittently he'd had left greater than right radicular-type symptoms bilaterally with numbness and tingling. Standing, walking, sitting, and bending aggravated his pain. He appeared to be in minimal distress, and on exam he had negative straight leg raising and intact sensation bilaterally, normal reflexes, and no atrophy. There were no positive Waddell signs. Dr. Goldberg reviewed the 11/8/22 lumbar MRI and 1/12/23 post-discogram CT scan, noting a small central L4/5 herniation and a small right L5/S1 herniation along with moderate disc degeneration. As he hadn't yet reviewed Petitioner's medical records, Dr. Goldberg issued a 10/20/23 addendum after doing so, including the records of Rush, Grandview Health, Dr. Vargas, Dr. Erickson, Dr. Lami, the 1/18/23 EMG, and the 9/17/23 MRI. He noted the CT and updated MRI also showed a small right sided herniation at L5/S1 and a small central herniation without any nerve compression at L4/5. Petitioner was neurologically intact on exam with negative straight leg raising. Dr. Goldberg felt that, based on the MRIs and discogram, Petitioner might have some mild discogenic low back, but he did not see anything that would cause the left leg radicular symptoms given no left-sided nerve compression. Petitioner's prognosis was "fair." Dr. Goldberg recommended a Functional Capacity Evaluation (FCE) at a reputable facility to determine Petitioner's working capabilities and to assess validity. He recommended against any two-level lumbar fusion given the mild degree of pathology seen in the films. If the FCE was determined to be invalid, Petitioner likely had a lumbar contusion, as his subjective complaints could not be substantiated by the diagnostic films. If valid and it indicates he can return to work full duty, he would be at MMI and could return to work. If valid and he was unable to return to work without restrictions, two to four weeks of work conditioning would be recommended. (Px13; Rx2).

Petitioner testified he wanted to treat with Dr. Goldberg at this point, but the doctor would not agree to do so.

Petitioner returned to Dr. Erickson on 1/15/24. While Dr. Lami opined Petitioner's lumbar condition was purely degenerative, Dr. Erickson noted no previous significant episodes of low back pain before 10/24/22. While Dr. Lami questioned complaints of testicular pain, Dr. Erickson stated: "The symptoms were relatively brief, and this area is a common source of referred pain from the lower lumbar discs. A description of vague groin or testicular pain is not a mystery in a case such as this." As to Dr. Lami's belief discogram was very controversial and Vargas' performance was technically improper, Dr. Erickson questioned his ignoring the test as a reasonable application in cases like this where a patient hasn't responded well to conservative measures over

time. Dr. Erickson also stated that Dr. Lami “makes the illogical argument that because there are no focal neurological findings and no classic radiculopathy, therefore no causative incident occurred. It is quite common for patients with primary disc injuries to have completely normal neurological examinations simply because the disc disruption does not involve severe nerve compression. Most of the pain in these cases is referred in nature.” Surgery continued to be recommended. (Px5; Px9).

On 1/31/24, the Petitioner presented to ATI Physical Therapy for an FCE. It was noted to be valid with good effort. Petitioner demonstrated heavy lifting on 50 to 100 pounds occasionally for the desk to chair, above shoulder and right and left carry lifts. His complaints while performing the FCE appeared to focus on the low back and left leg. The therapist generally noted no significant pain behaviors. It was determined by the therapist that he fell into the medium work demand level, while his job as a landscaper was indicated to be at the heavy demand level (50 to 100 pounds) while he met the DOT demand level for desk to chair above shoulder, and right and left carry lift for is job, he did not meet the requirements for chair to floor lift. Other specific activity potential problems were noted if the activities were more than occasional, such as bending/stooping, crouching, and squatting. Petitioner did not feel he was ready to go back to work. (Px8).

On 3/4/24, Dr. Erickson advised that the recommended surgery had still not been approved. Noting the FCE was deemed valid, Dr. Erickson opined that Petitioner should be limited to 25 pounds lifting frequently, 60 pounds occasionally, and no sitting or standing over 30 minutes, and frequent position changes – “He is not ready to return to work as a landscaper. He might succeed in a medium duty occupation if available.” Dr. Erickson continued to recommend surgery. (Px5).

Petitioner testified that he continued to have pain and sought another opinion with orthopedic surgeon Dr. Darwish (Illinois Bone & Joint) as his second voluntary choice of physician. On 10/10/24, he advised Dr. Darwish he had radiating back pain into the bilateral buttocks, left greater than right, and into the left leg to the foot. He also reported numbness, tingling, and weakness in the left leg. He had pain when sitting after prolonged standing. He had temporary relief with injections. Straight leg raise was positive bilaterally, and there was reduced bilateral gastric strength and decreased sensation to light touch in the left posterior/lateral leg. Flexion/extension x-rays showed no instability. There was mild loss of L5/S1 disc height. Dr. Darwish noted September 2024 MRI showed a right paracentral disc protrusion at L5/S1 causing moderate to severe right and moderate left lateral recess narrowing, and severe right and moderate left foraminal stenosis. Diagnosis included lumbar radiculopathy and prolapsed disc. Given the symptoms began with the work accident, Dr. Darwish opined the lumbar condition was related to the accident. He opined there was clinical, radiographical, and neurophysiologic evidence of nerve root dysfunction, and noting conservative treatment failed to date, he recommended L5/S1 interbody fusion. A repeat MRI would be needed. He advised Petitioner could return to light duty with no lifting over 40 pounds based on the FCE. (Px7). The 10/25/24 MRI impression was of moderate central canal and bilateral foraminal narrowing at L5/S1 due to right paracentral disc protrusion, lateralizing spondylosis, and facet arthropathy, and disc bulging at L4/5 with mild to moderate central canal and bilateral foraminal narrowing. (Px7).

On 11/6/24, Petitioner returned to Dr. Darwish, who reviewed the MRI and continued to recommend fusion surgery. In the meantime, he opined that Petitioner should remain off work. On 12/18/24, Dr. Darwish noted complaints of increasing pain along with numbness and tingling, and he continued to recommend surgery and off work status. Duexis, Zylotrol patches, and Zofran were prescribed. On 1/29/25, Petitioner advised Dr. Darwish he had some good and some bad days, and increased pain with certain positions. Petitioner was continued off work. On 3/12/25, Dr. Darwish recorded constant low back pain that radiated to the bilateral buttocks and down the left posterior/lateral thigh into the foot with numbness, tingling, and weakness in the left lower extremity. Petitioner remained off work and surgery continued to be recommended pending workers' compensation approval. (Px7; Px10).

Dr. Erickson testified via deposition on 7/25/23, indicating he had access to at least some of the records of Grandview Health and Dr. Vargas. Petitioner on 1/6/23 complained of his low back, left shoulder, and neck, with pain and tingling into the left arm and left leg to the foot. He had a good neurological exam with no focal findings. Petitioner's pain appeared to be postural, associated with vertical loading based on not being able to comfortably sit or stand. While he had L4/5 and L5/S1 herniations per MRI, nerve compression appeared unlikely given the normal neuro exam, though there may be some nerve involvement given the symptoms. Dr. Erickson didn't have a firm diagnosis, so he ordered a discogram and CT scan. He believed Petitioner might have primary segmental injury versus a simple contusion given the significant symptoms continuing since the accident. He relied on Dr. Vargas and the CT radiologist for the results of those tests, and his review of the CT film was consistent with the radiologist's findings, which were consistent with exam and the MRI. On 2/3/23, Petitioner could not comfortably sit and braced himself while standing, again consistent with primary segmental/disc injury. Exam and neurologic exam were again unremarkable. Given the findings and ongoing symptoms, Dr. Erickson a minimally invasive L4 to S1 decompression and fusion was discussed. Minimally invasive involves less muscular exposure and retraction/removal. While he did not believe there was instability, two discs are torn and painful and have their own nerve supply. He opined there can be irritation in the setting of inflammation or weight bearing. A lumbar brace and further therapy were recommended but Dr. Erickson believed the surgical procedure would be "quite helpful." When Petitioner still had 8-9/10 pain on 3/20/23, back much greater than leg, and the CT showed what appeared to be an increase in the L5/S1 herniation, the surgery was prescribed. The film showing bilateral lateral recess stenosis at both levels indicated a possibility of a component of nerve compression causing back and/or leg pain, though Dr. Erickson did not believe the stenosis was the primary problem. The larger disc on CT versus MRI could have been a progression of the disc or just a more detailed view than MRI. Dr. Erickson opined that the described fall from a standing position onto his back was sufficient to cause a segmental or disc injury. The Petitioner was unable to work pending either surgery or a natural level of improvement – he couldn't sit very long, such as with driving, and he had to change positions frequently but would still be in some distress. The treatment through his last exam of Petitioner was reasonable and necessary. He agreed with Dr. Lami that Petitioner may have initially had a back contusion, but it would be unlikely Petitioner would have this much pain this far along if it was just a contusion. (Px1).

On cross-exam, Dr. Erickson testified that the 11/8/22 MRI films were of sufficient quality based on his review. While he can't guarantee Petitioner would be pain free after surgery, he opined Petitioner had a good chance of improvement with surgery – he estimated an 85 to 90% chance of 85 to 90% improvement. Dr. Vargas refers 1-2 patients a month to him, probably less than 5% of his cases, and Dr. Erickson finds him to be a very good technician. He believes Petitioner would need a stand-alone fusion without caging. Dr. Erickson is aware there is controversy with discograms but doesn't think its negative. He believes the controversy is because it's a complicated test, expensive, and can have false negatives and positives. The results depend on how the test is done and when it is applied. It helps with some patients and provides little information with others. He recommends it as a "last resort test" after other testing has been done and there are MRI findings but no precise diagnosis, no localization with neurologic exam, and pain/discomfort with sitting and standing. He refers patients to multiple providers for discograms, including Dr. Vargas about 5% of the time, noting he is very experienced, and his technique is appropriate. The levels injected that are not the suspected pain levels are control levels. At least 3 levels should have been injected in Petitioner's case, and 4 was reasonable. There is an inherent subjective component to discogram testing, so it can be "faked", but avoiding this is purpose of the control levels. In Dr. Erickson's experience, the test itself does not harm a patient, though people can feel worse for a while after testing. Petitioner had 7/10 to 10/10 pain during his visits while his neurological exams were normal. Different people can review the same MRI and have different findings. Dr. Erickson did not recall previously reviewing an EMG, but testified that if normal, it is perfectly consistent with the normal neurological exams. Again, Petitioner has a structural problem with annular tears which do not allow him to bear weight without significant pain, so the EMG and neurologic exam don't change the surgical recommendation as it's

based on the subjective complaints, clinical presentation, discogram, and CT scan. His back pain has always been worse than the leg pain, but the leg symptoms still make sense - the EMG, as it states, does not rule out a sensory radiculitis. Plus, referred pain from the back is common with segmental injuries due to shared nerve pathways with discs. He testified: “(Petitioner’s) pain is almost certainly referred pain. Not radicular pain. Not pain from nerve compression. . .” The point of the fusion is to reduce the vertical load applied to the discs. (Px1).

On redirect, Dr. Erickson reiterated that EMG is not 100% accurate, and again agrees Petitioner doesn’t have lumbar radiculopathy. He didn’t recall if he himself ordered an EMG on 6/6/23 based on the request of a Section 12 examiner or not, but he is always happy to have more information. (Px1).

Dr. Lami testified on 9/6/23, and he testified consistent with the history of accident and symptoms indicated in his report. Petitioner’s reported 10/10 level pain was surprising given how severe 10/10 pain and during exam he was able to sit comfortably. Petitioner’s score in an AMA Guidelines pain disability questionnaire was 146 out of 150, indicating he perceived himself as extremely disabled. Petitioner had disc desiccation at L4/5 and L5/S1, which is a common and normal process as people age. The remaining discs had normal signal and height. There was a right disc protrusion at L5/S1, but Dr. Lami believed this was an incidental and insignificant finding as Petitioner had no corresponding clinical symptoms and the herniation did not look acute. There was also a central and slightly left L4/5 protrusion. EMG showed no nerve issues and Dr. Lami didn’t think the test added anything to the case, as Petitioner didn’t need an EMG based on his complaints, and questioned why it was ordered if the result was going to be ignored. Neither the MRI nor the EMG correlated with Petitioner’s pain complaints. He opined the CT scan was of no clinical significance. As to the significance of contrast leaking at L4/5 and L5/S1, he testified: “The significance is that this man had someone stuck a needle in his back four times injecting dye in their four discs.” Dr. Lami didn’t believe Petitioner was a discography candidate, noting he said he had to use a cane for five days after the discogram and that the test itself is controversial. He rarely orders it, maybe 10 times in 20 years, and only if MRI shows significant degenerative changes with a pain pattern that corresponds to a level that can be tested with one control level. A patient must be advised that injecting a control level can injure a normal disc. More than one control level given Petitioner’s age, two tall discs, and mild desiccation didn’t make sense. With 10/10 pain complaints, complaints from the scapula to the leg, and normal EMG, discography was not indicated. Dr. Lami testified there is literature finding if a normal disc is injected with pressurized fluid you can initiate a cascade of degenerative changes, so it is not a “benign procedure.” He questioned a finding of concordant pain in someone with pre-discogram 8/10 or 10/10 level pain, and post-discogram pain to where he had to use a cane. Dr. Lami opined that fusion surgery was not indicated – if the right disc herniation resulted in right-sided symptoms, microdiscectomy could be indicated at that level. Petitioner’s clinical symptoms don’t correspond to that disc: “This is a case of a purely pain case. Nothing else, No neurological deficit, no alteration of anatomy on the CT scan or MRI or x-ray, no alteration in neurological status. So it is pain, pain with a distribution . . . which cannot be explained by just discography or two mildly degenerative discs at L4/5 and L5/S1.” (Rx6).

Dr. Lami testified that Petitioner’s reported left-sided symptoms with no right-sided symptoms, and from left shoulder blade to pelvis with pain in the left arm and entire left leg, did not correspond to the MRI findings. Left arm complaints made no sense for a low back injury. The MRI findings were preexisting and degenerative and not consistent with the complaints. Dr. opined Petitioner’s symptoms when he examined him could not be supported as related to the alleged injury. He did not believe there was a work-related aggravation or exacerbation of the disc conditions, and believed Petitioner had reached MMI and needed no further treatment. He disputed any indication for chiropractic/PT treatment after 3-4 weeks, injections, or discogram given no radicular pain. There was no objective evidence supporting any permanent impairment as a result of the work injury. Dr. Lami opined L4/5 and L5/S1 fusion would not be beneficial to Petitioner given his exam, MRI, and subjective complaints. People with high subjective complaints tend to do well if there are significantly

corresponding objective findings. These discs are tall and relatively healthy looking. Even if called “minimally invasive”, which he himself performs, such surgery is nevertheless quite invasive however you do it, given screws, bone removal near nerves, cages, etc. He would advise Petitioner against surgery if it was his patient. He would tell him to exercise, lose weight, and strengthen his back. (Rx6).

On cross, Dr. Lami indicated whether Petitioner’s treaters violated standards of care was a legal issue. Using two normal control discs with discography was not the standard. He testified that “low field” MRIs tend to be performed on referral from chiropractors and may miss subtle findings, so he avoids these as their use is not a good practice. Annular tears can involve no pain or can involve pain if a herniation caused the tear and causes nerve pain. The belief is that a herniation and tear involve chemical and mechanical components of pain. Most people have annular tears as they age and “nothing happens” if they bend/twist/lift. A herniation, fracture, or dislocation can result in symptoms, not the tear itself. Petitioner verbally described his job with Respondent - Dr. Lami did not review a written job description. He agreed EMG is not 100% diagnostic for radiculopathy, “but if you are someone who’s a believer of that, then you should act accordingly.” He does not do EMGs with patients who have clinical symptoms correlating with MRI findings. The only records he reviewed are what are listed in his reports and could not say whether any other records could change his opinions without seeing them. People do experience pain differently. On redirect, Dr. Lami agreed he saw no testing or treatment for left arm complaints. It doesn’t make sense that L4 and L5 annular tears would cause pain from the left scapula to the leg.

Petitioner testified he wants to undergo the surgery recommended by Dr. Darwish because he has significant pain that is not going away and he wants to get better. He still has unpaid medical expenses related to his lumbar spine, which are presented in Px12. He is currently taking medication that is being prescribed by Dr. Darwish. He testified that he currently has a lot of left low back pain, from 5/10 to 7/10 level, that goes down the left leg to the foot. The pain increases with prolonged standing, sitting, or lying down, generally for 5 to 10 minutes or more, and increases significantly after a half hour. He tries to stay in constant movement for relief, testifying: “that’s all I can do.” He testified he was off work on 10/25/22 and 10/26/22, then returned to work on 10/27/22 for about 3 hours before leaving due to increased pain and has since been off work from 10/28/22 to the present, currently per Dr. Darwish. He received TTD from 10/24/22 to 10/31/24, at \$480.00 per week, but has not received further benefits since that date. He has not worked for any other employer since the accident. Petitioner testified he has been provided with light duty restrictions from time to time, which he gave to owner Mark, but was not offered any accommodated work. He testified that none of his treating physicians has indicated he could return to full duty as a landscaper. The job with Respondent requires lifting over 60 pounds. Petitioner denied any prior low back injuries, and denied anything has occurred since 10/24/22 that has increased his back pain. On or about 1/28/25 he was bending and felt some back spasms, but ultimately returned to his baseline pain.

On cross examination, Petitioner testified he was not aware of any side effects of the proposed surgery. Dr. Darwish did not explain any side effects - he explained that hardware would be implanted to help him improve. Dr. Darwish did advise that infection was a risk of surgery. He acknowledged he is aware that two doctors have recommended against the surgery but still wants to undergo it. He wants to go back to feeling like he did prior to getting hurt and to be able to work, and Dr. Darwish indicated this is possible with the surgery.

CONCLUSIONS OF LAW

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

An accident arising out of and in the course of Petitioner's employment on 10/24/22. The Arbitrator finds that the Petitioner has met his burden of proof showing that his lumbar condition is causally related to the 10/24/22 accident.

In support of this finding, the Arbitrator relies on the Petitioner's un rebutted testimony and the preponderance of the medical evidence from Petitioner's treating physicians. The medical evidence shows that Petitioner continued to have complaints of pain in his low back and into his left leg since the accident date. There is no evidence that he sustained any subsequent injuries that could have been considered intervening in any fashion.

Both treating surgeons Dr. Erickson and Dr. Darwish indicated that Petitioner's lower lumbar condition of ill-being is causally related to the work accident. Dr. Goldberg, who appears to have been a jointly selected second opinion, did not specify that the Petitioner's lumbar condition was causally related to the work accident, but his report supports a causal relationship to the development of back pain. Dr. Lami opined that the Petitioner sustained a back contusion on the accident date that should have resolved within approximately four weeks after the injury. While he limits his causation opinion to a contusion, the Arbitrator notes that the Petitioner has continued to have lumbar symptoms into the left leg since the accident and well after the noted four week period.

Taking the evidence as a whole, the greater weight of the totality of the evidence supports that Petitioner's lumbar condition of ill-being remains causally related to the 10/24/22 work accident.

The Arbitrator does note that the Petitioner's left scapular and arm complaints don't make sense based on a lumbar injury, and thus the Petitioner has failed to prove that these complaints are causally related to the work accident, other than as possibly referred pain from the lumbar condition. There is no evidence to support any upper back, left shoulder, or left arm injuries that would be related to the accident.

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

With regard to average weekly wage, the Arbitrator finds that the Petitioner began working for Respondent on 6/23/22 and continued working through the accident date. This covered a period of 19 weeks. However, using the weeks and parts thereof method from Section 10 of the Act, the Petitioner's time worked in this period appears to have been 17-4/7 weeks. During that time, Petitioner earned a total of \$11,504.75 (See Px15 and Rx5). Dividing \$11,504.75 by 17-4/7 weeks results in an average weekly wage of \$654.75.

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:

Consistent with the Arbitrator's findings above, the Arbitrator finds that the Petitioner's medical treatment relating to his low back and bilateral leg condition stemming from his October 24, 2022 work accident has been reasonable and necessary. This includes the treatment that Petitioner received from Rush-Copley (\$7,739.00), Grandview Health Partners (\$19,084.60), Matrix Medical Supply (\$3,103.00), LakeShore Surgery Center FAC (\$15,037.57), LakeShore Surgery Center Physicians (\$2,465.00), Western Touhy Anesthesiology (\$1,890.00) LakeShore Open MRI (\$3,646.00), Delaware Physicians (\$3,413.20), River North Pain Management Consultants (\$42,000.00), Micro Neuro Spine/Dr. Erickson (\$2,761.00), Midwest Orthopaedics (\$3,700.00), Illinois Bone & Joint (\$3,366.00), and ATI Physical Therapy (\$2,793.28),

Petitioner claimed entitlement to billing from Rehab Dynamix, but no billing for this facility was included in Px12. The billing for Alikai Health includes charges from 2/11/25 and appear to involve durable medical equipment based on the coding. The charges totaling \$8,080.00 are denied as there are no accompanying medical records to support this date of service or any prescription for such items. The Arbitrator also denies the charges of Elite Care, Rx. While Dr. Darwish prescribed Zylotrol pain patches, the charges instituted by this facility for these patches are ridiculous at \$4,161.32 per entry. The remaining entries for Ibuprofen/Famotidine (\$1,309.40) and Ondansetron (2 x \$978.36) also appear to be excessive charges on their face for medications.

The Arbitrator notes that five transportation charges from Grandview Health, \$62.00 each, are denied as there is no evidence such transportation was reasonable and necessary, thus the total amount of billing was reduced by \$310.00. (See Px2, p. 10). Non-emergency transportation charges totaling \$1,100 for 4 entries from Delaware Physicians are denied for the same reason, as no evidence was presented regarding the medical necessity for such transportation. The total amount awarded for billing from this facility was reduced by \$1,100.00. It appears that Respondent paid for some of the transportation charges and is entitled to reimbursement for same from the noted providers in the amounts Respondent paid.

All of the medical expenses noted above that have been awarded are awarded pursuant to Sections 8(a) and 8.2 (Medical Fee Schedule) of the Act. The Respondent is liable for the amount indicated in the Fee Schedule or the amount accepted by the provider as full payment of a medical charge, whichever is less.

Respondent is entitled to credit against any and all awarded medical expenses that were paid by Respondent prior to the hearing, and for any such credited expenses the Respondent shall hold the Petitioner harmless from any claims from the providers. The Arbitrator notes that Respondent submitted proof of its payments towards medical expenses as Rx3.

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

Prospective medical is the key issue in this case. It appears that almost every doctor involved in this case, at least every surgeon, has concluded that the Petitioner does not have any neurological deficits and is not suffering from a true radiculopathy. Both Dr. Erickson and Dr. Darwish have opined that fusion surgery is indicated, with Erickson recommending both the L4/5 and L5/S1 levels, and Dr. Darwish recommending the L5/S1 level. Both Dr. Goldberg and Dr. Lami have opined that surgery is not recommended for Petitioner, noting general relatively mild degenerative findings at L4/5 and L5/S1.

The case is complicated by two factors in the Arbitrator's view. One is the Petitioner significantly high level of pain complaints, generally in the 7/10 to 10/10 level, which was described as pain as severe as one can imagine having. The second issue involves the upper body complaints made by Petitioner to Dr. Erickson and Dr. Lami. Interestingly, these complaints are not seen by the Arbitrator in the medical records prior to Dr. Erickson becoming involved in the case, or in the records of Dr. Goldberg or Dr. Darwish.

Despite these factors, the Arbitrator finds that the Petitioner is entitled to the surgery recommended by Dr. Darwish. The key factors in this determination are that, again, the recommendation is being made based on axial back pain, not radicular pain. Thus, the negative EMG does not really play into the Arbitrator's determination. The MRIs and post-discogram CT scan appear to the Arbitrator to have significantly similar findings at L4/5 and L5/S1. The findings do appear to be significantly degenerative, but also show levels of disc protrusions at both levels, worst at L5/S1. The language used by different doctors leaves questions as to whether these are protrusions or true herniations with extruded nucleus pulposis, but the January CT and MRI appear to show extruded disc material. Because again it does not appear that Petitioner has true radicular symptoms the fact that

the discs appear to be either right sided or central and left and may not correlate to the left leg does not rebut the need for surgery.

While Dr. Lami disputed the propriety of discogram, and the Arbitrator does not have the independent ability to determine if the injected pressures were proper or not, the fact remains that the results indicated concordant pain at two levels, L4/5 and L5/S1, and no pain at the control levels of L2/3 and L3/4.

While the level of Petitioner's subjective complaints seems excessive at 8/10 to 10/10 levels, the Arbitrator notes that he has had consistent symptoms since basically the time of the accident. There was an initial indication of pain in the bilateral legs, but since very soon after the accident the complaints have been limited to the left side. Of important note is that the Petitioner has had consistent complaints of back pain, particularly depending on his positions and activities, and left leg symptoms with no lasting relief despite multiple conservative measures including chiropractic treatment, therapy, medication, and injections.

The opinions of Drs. Goldberg and Lami are well taken in terms of the indication that the findings at L4/5 and L5/S1 are relatively mild. However, the Arbitrator notes that the Petitioner again has had the same complaints since shortly after the accident date with no relief and has failed conservative treatment. Again, while his pain levels seem high, two surgeons have opined that surgery is indicated and the MRI and CT scans appear to show protrusions and evidence of extruded disc material, and the discogram findings were significantly different at L4/5 and L5/S1 than they were at L2/3 and L3/4. It is on this basis that the Arbitrator believes the surgery recommended is reasonable and necessary pursuant to Section 8(a) of the Act, subject to Section 8.2 of the Act.

Respondent shall authorize the L5/S1 fusion surgery recommended by Dr. Darwish. While Dr. Erickson recommended fusion of L4/5 as well, his last opinion in this matter was in July 2023. The Arbitrator finds that the surgery recommended by Dr. Darwish is significantly more current and based on the most current information in the case, though it is noted that discogram was positive at L4/5 as well. The assumption is that Dr. Darwish was aware of this.

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 finds that the Petitioner was temporarily totally disabled as a result of the 10/24/22 work accident from 10/25/22 through 4/30/25, the initial hearing date in this matter. The Arbitrator heard no additional testimony and reviewed no additional documentation in support of TTD from 5/1/25 through the second hearing date of 6/5/25 to be able to address TTD in this period. Given this, the Petitioner is not barred in the future from seeking TTD from 5/1/25 forward.

The greater weight of the evidence based on the medical records supports that the Petitioner was either completely off work or given restrictions that Respondent could not accommodate during this time period. These notes were issued by Grandview Health, Dr. Vargas, Dr. Erickson, and/or Dr. Darwish. Dr. Goldberg also recommended an FCE, the results of which led to work restrictions that Petitioner testified could not be accommodated. The medical evidence shows that the Petitioner's condition has not yet stabilized, as he is still being prescribed medical treatment in the form of surgery and therefore has not reached MMI. Accordingly, the Respondent shall pay Petitioner TTD for the aforementioned time period.

Based on the stipulation that the Petitioner was married with 3 dependent children, the minimum TTD rate of \$480.00 based on the date of injury and 4 dependents applies in this matter.

Vargas v. Cox Landscaping, 22 WC 28413

The Respondent is entitled to a stipulated \$50,468.57 credit (see Arbx1) towards its TTD liability based on payments made to Petitioner prior to the hearing dates.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC008072
Case Name	Claudia Espita-Perez v. Labor Network Personnel Service
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0178
Number of Pages of Decision	32
Decision Issued By	Maria Portela, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Alexandra Broderick
Respondent Attorney	Erin Fiore, Robert Smith

DATE FILED: 6/10/2026

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

17WC008072

Page 1

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLAUDIA ESPITIA PEREZ,

Petitioner,

vs.

NO: 17WC008072

LABOR NETWORK PERSONNEL
SERVICES, INC & ARYZTA, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission makes two clarifications in the Findings of Fact section. In the first sentence of the last paragraph on page 3, after the word "injection," we strike the word "with" and replace with "and on April 18, 2017, Petitioner reported". In the fourth full paragraph on page 5, after "Beginning on February 1, 2018," we strike the phrase "and continuing" and replace with "through September 27, 2018 and again from May 20, 2021".

The Commission affirms the Arbitrator's finding that Petitioner's current left shoulder condition remains causally related to her work injury but modifies the Decision regarding her back and neck conditions.

The initial medical records on February 25, 2017 and February 28, 2017 do not mention any back complaints and specifically indicate “denies back pain, joint pain, swelling.” *Px1, T.118, 122*. The first mention of upper back pain is in the March 4, 2017 record of Dr. Farooq Khan (“Dr. F. Khan”)¹ whose assessment included myofascial pain, cervicgia, cervical radiculitis, pain in the thoracic spine and pain in the left shoulder. *Px2, T.153*. Petitioner was treated conservatively for the back and other body parts but, following the completion of physical therapy in May 2017, there are no further back complaints in the medical records, no subsequent recommendations for medical treatment and Petitioner did not testify about any back complaints at trial. Therefore, we find that Petitioner’s current back condition is no longer causally related to her work accident.

Petitioner had neck and cervical spine complaints and underwent physical therapy and a series of three cervical epidural steroid injections (ESIs). The last mention of any neck issues or diagnosis was documented in the August 29, 2017 record of Dr. F. Khan *Px2, T.189*. None of the subsequent records indicate any neck complaints until Petitioner was evaluated nearly four years later, on May 20, 2021, at Taylor Rehab and Disc Injury Center where Petitioner gave a history of chronic neck complaints. However, the chronicity of Petitioner’s neck condition is not supported by the medical records. The Commission notes that Petitioner had no neck treatment or treatment recommendations since 2017, no diagnosis related to the neck since August 29, 2017, and Petitioner did not testify about any neck complaints at trial. Thus, the Commission finds that Petitioner’s neck complaints resolved at some point shortly after her visit with Dr. F. Khan on August 29, 2017 and that her current neck condition is not causally related to her work accident.

Regarding temporary total disability (TTD), we modify the Decision to award benefits for 46-5/7 weeks from March 4, 2017 through January 24, 2018. Petitioner had no compelling reason for her failure to attend a properly scheduled Section 12 examination with Dr. Forsythe on January 25, 2018. Pursuant to Section 12 of the Act and the Supreme Court’s decision in *R.D. Masonry, Inc. v. IC*, 215 Ill. 2d 397 (2005), the Commission finds that Petitioner’s “right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under [the] Act for such period.” *R.D. Masonry, Inc. at 415*.

We next address the Utilization Review (UR) report, authored by Dr. Mohammed Khan (“Dr. M. Khan”) that was submitted into evidence by Respondent. *Rx3*. Section 8.7(e)(2) of the Act states, “When making retrospective reviews, utilization review programs shall base reviews solely on the medical information available to the attending physician or ordering provider at the time the health care services were provided.” *820 ILCS 305/8.7(e)(2)*. The Arbitrator found that the UR renders an opinion on treatment through May 30, 2017 but the report indicates that medical records were reviewed through June 5, 2017. The Arbitrator concluded that the UR was invalid because it “clearly uses records that were not available to the provider when making the recommendations.” *Dec. 13*.

Initially, we note the records reviewed by Dr. M. Kahn that were dated after May 30, 2017 were “Health Insurance Claim Form[s]” (hereafter referred to as “HIC Forms”). *Rx3, T.1052*. Although the exact forms Dr. M. Kahn reviewed are not attached to his report, we find that billing records such as these were not the basis of any substantive medical judgment, analysis or recommendations and their inclusion in the records reviewed by him did not violate the retrospective review requirements in §8.7(e)(2). Moreover, it is likely that the dates on the HIC Forms merely

¹ For clarification, Petitioner’s treating physician is Dr. Farooq Khan (“Dr. F. Khan”) and Respondent’s Utilization Review physician is Dr. Mohammad Khan (“Dr. M. Khan”).

reflect when they were printed and do not support a conclusion that the treating physicians did not have access to the information contained on them at the time of their treatment recommendations. For example, Dr. M. Khan's UR report indicates that he reviewed nine HIC Forms from Dr. F. Khan from April 10, 2017 through June 1, 2017. None of the dates on those HIC Forms correspond to actual dates of service when Dr. F. Khan treated Petitioner. Petitioner submitted into evidence the HIC Forms for Dr. F. Khan's services from March 4, 2017 through August 29, 2017. *Px10, T.799-807*. However, the "Signature of Physician..." box 31 on all these HIC Forms indicate they were signed on "04 26 21," nearly four years after the dates of service. *Id.* Clearly, the date these HIC Forms were "signed" is the date they were printed. It is likely that there could be multiple versions of the same HIC Forms that are identical except for the date they were "signed," or more accurately, when they were printed. Therefore, we find that the treating physicians had access to the billing information related to the services they provided to Petitioner that Dr. M. Khan reviewed at the time of his UR report. Accordingly, the Commission reverses the Arbitrator's finding pertaining to the invalidity of the UR report and finds it to be valid.

Having found the UR to be valid, the Commission notes Dr. F. Khan did not avail himself of the UR appeals process to provide evidence "that a variance from the standards of care... [was] reasonably required to care or relieve the effects" of Petitioner's injuries. *See 820 ILCS 305/8.7(i)*. Nevertheless, Section 8.7 of the Act states, "[a]n admissible review shall be considered by the Commission along with all other evidence and in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment." *Id. at 8.7*.

Therefore, we address each of Dr. M. Khan's seventeen (17) UR answers, and consider them along with all the other evidence to determine whether Petitioner has met her burden of proof regarding the reasonableness and necessity of the treatment, as follows:

- 1) "Was Transportation to all OV's [Office Visits], PT [Physical Therapy] and procedures medically necessary?" (*Rx3, T.1056*)

Dr. M. Khan non-certified all the transportation expenses. He noted the "ODG Neck and Upper Back chapter does not address the request for transportation to all office visits." Instead, he used an "Alternate ODG chapter" for the Knee and Leg. That guideline refers to "patients with disabilities preventing them from self transport who are age 55 or older and need a nursing home level of care." Dr. M. Khan noted that Petitioner sustained a neck injury in February 2017 and identified her various treatments but opined that Petitioner's cervical MRI showed some disc bulges but no significant spinal canal stenosis or nerve root or spinal cord impingement. He concluded, "According to ODG, transportation to medical appointments is indicated when the patient has a disability that prevents self transport. No such disability is noted in the medical records provided. The patient has neck pain, however, there are no findings documented which prevent the patient from either driving, getting a ride with someone or taking public transportation. Therefore, the request is not medically necessary and is non-certified." *Rx3 at 9-10, T.1056-57*. Petitioner testified that she does not drive but she was never restricted by a doctor from driving and she did not injure her legs or her feet. *T.48-49*. Petitioner never testified that she was unable to take public transportation to her medical visits due to a work-related health condition. Dr. F. Khan did not avail himself of the UR appeal process. The Commission AGREES with the non-certification of

transportation expenses and finds that Petitioner failed to prove that these expenses were a reasonably required variance from the standards of care. Therefore, we modify the medical award to deny the transportation expenses.

- 2) “Was a left cervical interlaminar ESI under FG [Fluoroscopic Guidance] with MAC [Monitored Anesthesia Care] sedation with epidurography... performed on 04/04/17 medically necessary?” (*Rx3, T.1057*)

Dr. M. Khan non-certified these treatments and wrote, “The patient has had complaints of neck pain and has been treated with physical therapy, medications, epidural steroid injection and trigger point injections.” *Rx3 at 10, T.1057*. He opined that there was no clinical evidence of radiculopathy and the MRI does not reveal any nerve root impingement, both of which are necessary under ODG guidelines to perform a CESI. *Id.* On March 4, 2017, Dr. F. Khan diagnosed Petitioner with cervicalgia, cervical radiculitis and noted limited range of motion of the neck due to pain. *Px1, T.151-53*. On March 28, 2017, Dr. F. Khan reviewed Petitioner’s cervical MRI, noted an exacerbation of cervical symptoms since she started physical therapy and recommended consideration of the CESI if Petitioner was not improved within four weeks of initiating physical therapy. *Id. at 155-58*. Consistent with Dr. F. Khan’s recommendation, Petitioner started therapy on March 6, 2017 (*Px3*) and underwent the CESI four weeks later on April 4, 2017. *Px5, T.256*. Petitioner also testified she obtained some relief from the injection. *T.21, 67-68*. Therefore, the Commission DISAGREES with the non-certification of the injections on April 4, 2017, and finds that Petitioner has proven that a that a variance from the standards of care was reasonably required in this case.

- 3) “Was a CS [Cervical Spine] MRI performed on 03/08/17 medically necessary?” (*Rx3, T.1057-8*)

Dr. M. Khan non-certified the cervical MRI and wrote, “This patient's injury was only two weeks prior to the request for the MRI and on examination at that time, there were only minor neurologic deficits noted which included a very slight decrease in strength in some muscles of the upper extremities. According to ODG, MRI of the cervical spine is indicated when there are trauma and severe radiculopathy. This patient had no clinical examination findings of significant radiculopathy. Therefore, the requested MRI was not medically necessary and is non-certified. *Rx3 at 11, T.1058*. However, the Commission notes that Dr. M. Khan, himself, used the results of this MRI to support his non-certification opinions regarding other treatment. More significantly, Dr. Salehi eventually used this MRI to rule out a cervical cause of Petitioner’s left shoulder and arm complaints, which resulted in the referral to an orthopedic surgeon. Therefore, the Commission DISAGREES with the noncertification and finds that Petitioner has successfully shown that a variance from the standard of care was reasonably required in this case.

- 4) “Was a 3-dimensional reconstruction CS MRI...performed on 03/08/17 medically necessary?” (*Rx3, T.1058*)

Dr. M. Khan non-certified this 3-dimensional reconstruction because he had non-certified the cervical MRI itself. The Commission finds that Dr. M. Khan did not specifically address the appropriateness of 3-dimensional reconstruction as it relates to a cervical spine MRI.

Since the Commission has found that the cervical MRI was reasonable and necessary, we do not find Dr. M. Khan's opinion persuasive regarding this 3D reconstruction and DISAGREE with the non-certification.

- 5) "Was a LS [Lumbar Spine] MRI performed on 03/08/17 medically necessary?" (*Rx3, T.1058-9*)

Dr. M. Khan non-certified the lumbar MRI and wrote, "No [complaints] of low back pain are noted nor are there any abnormal physical findings documented of the low back or neurologic examination of the lower extremities. Lumbar spine MRI is requested. According to ODG, lumbar spine MRI is indicated when there are neurologic findings. No neurologic findings referable to the lumbar spine are noted. Therefore, the requested MRI of the lumbar spine is not medically necessary and is non-certified." *Rx3, at 12, T.1059*. The Commission AGREES with the non-certification because there were no documented lumbar complaints prior to this lumbar MRI having been performed. Despite some confusing post-MRI records reflecting lumbar symptoms and whether they were improved versus exacerbated by therapy, these are insufficient for Petitioner to meet her burden of proof that the variance from the standards of care was reasonably required in this case.

- 6) "Was a 3-Dimensional Reconstruction LS MRI... performed on 03/08/17 medically necessary?" (*Rx3, T.1059*)

The Commission AGREES with Dr. M. Khan's non-certification of this 3-dimensional reconstruction because the lumbar MRI, itself, was not reasonable or necessary.

- 7) "Was a pain management consult performed on 03/04/17 medically necessary?" (*Rx3, T.1059-60*)

Dr. M. Khan non-certified Petitioner's visit with Dr. F. Khan on March 4, 2017 based, in part, upon the fact that Petitioner's March 8, 2017 MRI did not show significant spinal canal stenosis or nerve root or spinal cord impingement. The Commission finds that this violates the requirements for a retrospective review in §8.7 of the Act. Dr. M. Khan also opined that the specialized expertise of a pain management physician is not medically necessary within two weeks of an injury. *Rx3 at 13, T.1060*. However, following Petitioner's initial treatment with Physicians Immediate Care, where she had been sent by Respondent, she began treating with Dr. F. Khan. The fact that he is a pain-management specialist does not negate the fact that he was Petitioner's first choice of physician and that she was entitled to seek treatment with him pursuant to §8(a) of the Act. Therefore, the Commission DISAGREES with the non-certification of the March 4, 2017 consultation with Dr. F. Khan.

- 8) “Was Meloxicam 7.5mg #60 dispensed on 03/04/17 & 04/18/17 medically necessary?” (Rx3, T.1060)

Dr. M. Khan certified this treatment and the Commission AGREES with this certification.

- 9) “Was Pantoprazole 30mg #30 dispensed on 03/04/17 & 04/18/17 medically necessary?” (Rx3, T.1061)

Dr. M. Khan certified this treatment and the Commission AGREES with this certification.

- 10) “Was Cyclobenzaprine 7.5mg #90 dispensed on 03/04/17 & 04/18/17 medically necessary?” (Rx3, T.1061)

Dr. M. Khan modified the certification to 42 tablets and wrote, “According to ODG, muscle relaxants may be used for short-term use in patients with acute musculoskeletal injury. Use should be limited to two weeks. Therefore, this request is modified to certify only Cyclobenzaprine 7.5mg #42 on 03/04/17. No more than 42 tablets should have been dispensed and the cyclobenzaprine request for 04/18/17 is non-certified.” Rx3 at 14, T.1061. Since Dr. F. Khan did not engage in the UR appeals process to explain why Cyclobenzaprine was prescribed for longer than 2 weeks, the Commission AGREES with the modification of the certification.

- 11) “Was Docusate Sodium 100mg #60 dispensed on 03/04/17 & 04/18/17 medically necessary?” (Rx3, T.1061-2)

Dr. M. Khan non-certified this medication and wrote, “According to ODG, stool softeners may be indicated to prevent constipation induced by narcotic medications. However, this patient is not taking narcotic medications. Therefore, the requested docusate sodium 100mg #60 dispensed on 3/4/17 and 4/18/17 is not medically necessary and is non-certified.” Rx3 at 15, T.1062. On March 4, 2017, Dr. F. Khan noted, “Patient given prescription for Colace [Docusate Sodium] to decrease constipation, which she complained of developing even with the use of NSAID medications.” Px2 at 4, T.153. The Commission notes that Petitioner had not been prescribed narcotic medication and Dr. F. Khan did not avail himself of the UR appeals process to explain how NSAID medications cause constipation. The Commission AGREES with the non-certification of the Docusate Sodium and finds that Petitioner has failed to prove that the variance from the standard of care was reasonably required in this case.

- 12) “Were Terocin Patches #20 dispensed on 03/04/17 medically necessary?” (Rx3, T.1062)

Dr. M. Khan non-certified this medication wrote, “ODG does not specifically address the request for Terocin patches (Lidocaine and Menthol). ODG Pain (updated 07/10/17) regarding Topical analgesics states, “Recommended as an option as indicated below. Largely experimental in use with few randomized controlled trials to determine efficacy or safety.

Primarily recommended for neuropathic pain when trials of antidepressants and anticonvulsants have failed.” *Rx3 at 15, T.1062*. Dr. M. Khan concluded, “According to ODG, topical salicylate may be used for pain but topical lidocaine is indicated only as second line for neuropathic pain or for postherpetic neuralgia. [Terocin] contains topical lidocaine and there is no clinical evidence of neuropathic pain or postherpetic neuralgia. Therefore, the requested Terocin patches are not medically necessary and are non certified.” *Id.* Although Dr. F. Khan did not engage in the UR appeals process, he did note, in his March 4, 2017 record, that he prescribed the Terocin patch “to apply to the cervical/upper back/shoulder region on the LEFT side for topical analgesic to limit the use of systemic medications.” *Px2 at 4, T.153*. Also, on August 11, 2017, when Dr. Silver saw Petitioner and diagnosed left shoulder impingement, he prescribed medications including, “Ultram for pain will be supplemented by topical Lidocaine and Terocin so as to minimize use of narcotic medications.” *Px7 at 3, T.285*. Considering all the evidence in the record, as required by §8.7 of the Act, the Commission DISAGREES with the non-certification and finds that Petitioner successfully proved that a variance from the standards of care was reasonably required.

- 13) “Was a Vascutherm/game ready unit...with wrap...for cervical from 04/04/17-05/23/17 medically necessary?” (*Rx3, T.1062-3*)

Dr. M. Khan non-certified this treatment and opined, “A vascutherm/game ready unit with wrap is requested. According to ODG, this device may be useful to prevent swelling after surgery. This patient did not have surgery. Therefore, the requested Vascutherm/game ready unit is not medically necessary and is noncertified.” *Rx3 at 16, T.1063*. Since Petitioner did not have surgery, the Commission AGREES with the non-certification and finds that Petitioner has failed to prove that the variance from the standard of care was reasonably required.

- 14) “Were Pain Management FUVs [Follow Up Visits]... performed on 03/28/17, 04/18/17, 04/25/17 & 05/30/17 medically necessary?” (*Rx3, T.1063*)

Dr. M. Khan non-certified these visits because, “[a]s the initial pain management consult was not necessary, pain management follow up visits were not medically necessary.” *Rx3 at 16, T.1063*. However, Dr. F. Khan was Petitioner’s first choice of physician and she was entitled to seek treatment from him under §8(a) of the Act. Therefore, the Commission DISAGREES with the non-certification of the follow up visits with Dr. F. Khan.

- 15) “Was a CESI...with TPI [Trigger Point Injection] x3 performed on 05/02/17 medically necessary?” (*Rx3, T.1063-4*)

Dr. M. Khan non-certified these injections and wrote, “MRI of the cervical spine shows some disc bulges which indent the thecal sac, however, no significant spinal canal stenosis is documented, no nerve root or spinal cord impingement is noted. An epidural steroid injection with trigger point injection is requested. As noted previously, no significant clinical findings of radiculopathy on examination corroborated by imaging findings are noted. ODG allows for an epidural steroid injection to treat symptomatic nerve root compression. ODG does not

recommend trigger point injection in the absence of a myofascial pain syndrome. No nerve root compression or myofascial pain syndrome are noted. The requested epidural steroid injection and trigger point injections performed on 05/02/17 are not medically necessary. Therefore, the request is non-certified.” *Rx3 at 17, T.1064*. On April 18, 2017, Dr. F. Khan documented that Petitioner reported “70% initial relief, with 50-60% sustained relief” after the CESI that was performed on April 4, 2017. *Px2, T.160*. Petitioner also testified she obtained some relief from the injection. *T.21-22, 39-40, 67-68*. Therefore, the Commission DISAGREES with the non-certification of the injections on May 2, 2017 and finds that Petitioner has proven that a variance from the standards of care was reasonably required in this case.

- 16) “Was a CESI...with TPI x3 under FG with MAC Sedation performed on 05/30/17 medically necessary?” (*Rx3, T.1064*)

Dr. M. Khan non-certified these injections for similar reasons discussed in #15 above. On May 23, 2017, Dr. F. Khan noted that, after the CESI that was performed on May 2, 2017, “Patient reports substantial relief with this injection, stating that this is the most [beneficial] treatment she has received for her pain complaints thus far. Patient states that she has had increased [range of motion] in the cervical region. She additionally reports that she did not require any pain medication for 1 week status post injection.” *Px2, T.173*. He recommended a repeat CESI and referral to a spine surgeon for a second opinion. *Id., T.175*. Therefore, the Commission DISAGREES with the non-certification of the injections on May 30, 2017 and finds that Petitioner has proven that a variance from the standards of care was reasonably required in this case.

- 17) “Was PT...to CS with modalities...x18 sessions from 03/06/17- 04/25/17 medically necessary?” (*Rx3, T.1064-5*)

Dr. M. Khan modified the certification and wrote, “[a]ccording to ODG, 12 visits are indicated for the treatment of radiculopathy. This patient has symptoms consistent with radiculopathy and minimal physical examination findings. Physical therapy is a reasonable and appropriate option for initial treatment for this patient's condition. Therefore, the request is modified to certify 12 visits of physical therapy to the cervical spine with modalities... from 03/06/17 - 04/25/17.” *Rx3 at 18, T.1065*. The Commission notes that the physical therapy records for the 18 visits from March 6, 2017 to April 25, 2017 are mostly illegible but they do reflect a reduction in pain symptoms from 7-8/10 on March 6, 2017 (*Px3 at 2, T.213*) to 5-6/10 on April 25, 2017 (*Id. at 20, T.231*). Although Petitioner underwent six more visits of therapy than Dr. M. Khan certified and Dr. F. Khan did not engage in the UR appeals process, the Commission must consider the UR report “along with all other evidence and in the same manner as all other evidence.” 820 ILCS 305/8.7. Therefore, we point out that the therapy records reflect that Petitioner was also complaining of left greater than right upper extremity pain. *Px3*. Petitioner saw Dr. Salehi, on June 28, 2017, who opined that Petitioner’s “component of neck pain...may be due to a shoulder pathology as her MRI of the cervical spine does not reveal any significant pathology” and he recommended a left shoulder MRI and potential referral to orthopedics. *Px6 at 4, T.281*. Petitioner was eventually diagnosed by Dr. Silver on August 11, 2017 with rotator cuff impingement that was noted clinically and

was consistent with the inflammation noted on Petitioner's left shoulder MRI. *Px7 at 2, T.285*. Dr. Silver recommended that Petitioner "continue physical therapy so as not to lose any further motion or strength preoperatively." *Id. at 3, T.286*. Therefore, the Commission DISAGREES with the modification of the certification for only 12 physical therapy visits. We find that Petitioner has successfully proven that a variance from the standards of care outlined by Dr. M. Khan was reasonably required in this case because the therapy records indicate it was reducing Petitioner's pain, Dr. Salehi opined that Petitioner's cervical pain might be coming from her left shoulder, and Dr. Silver diagnosed left shoulder impingement and recommended continued therapy pending surgery.

Based on our conclusions regarding the UR report and after consideration of all the evidence, we next address the causal connection, reasonableness and necessity of the medical expenses claimed by Petitioner. Petitioner's exhibits 10 through 24 are awarded or denied as follows (with modifications of the Arbitrator's awards in bold):

Exhibit	Description	Amount Awarded
Px10	Lagrange Modern Pain Consultants 3/4/17-8/27/17	\$3,943.00
Px11	Stats Meds Rx 3/4/17-6/20/17 We modify the 3/4/17 charge for Cyclobenzaprine #90 (\$352.80) and award only \$164.64 for 42 units (($\$352.80/90 = \$3.92$ per unit; $42 \text{ units} \times \$3.92 = \$164.64$). We deny the 3/4/17 charge for Docusate Sodium (\$78.60). We deny the 4/18/17 charge for Cyclobenzaprine #90 (\$352.80) and the 4/18/17 charge for Docusate Sodium (\$78.60). All other charges are awarded.	\$1,874.24
Px12	Universal Healthcare 3/6/17-8/10/17	\$20,715.00
Px13	Edgebrook Radiology 3/8/17-6/28/17 We deny all travel charges and all lumbar MRI charges. We award the charges for the cervical MRI, the cervical 3-dimensional rendering and the left shoulder MRI.	\$3,704.00
Px14	NW Chicago Medical Surgery Center 4/4/17-8/1/17	\$14,666.24
Px15	NW Chicago Medical – Transportation 4/4/17-8/1/17 We deny all transportation charges.	DENIED
Px16	Network Durable Medical Equipment 4/4/17-5/23/17 We deny all the Game Ready Cold/Compression therapy charges.	DENIED
Px17	Dr. Desai 4/4/17 -8/1/17	DENIED

	The dates of the charges correspond to the 3 CESIs (4/4/17, 5/2/17 and 5/30/17) and the left shoulder injection on 8/1/17. However, there are no treating records of Dr. Desai Virendra in evidence and Dr. F. Khan's procedure notes do not mention that Dr. Virendra assisted or was involved. Therefore, these bills are denied because they are not supported by treating records.	
Px18	Neurological Surgery & Spine Surgery 6/28/17	\$525.00
Px19	Orthopaedic Specialists of the North Shore 8/11/17-10/1/18	\$2,682.00
Px20	RX Development 8/11/17-3/16/18	\$31,266.09
Px21	Confirmative Management 8/11/17-2/21/18	\$4,698.00
Px22	Workers Compensation RX 9/14/17-3/15/18 Important information such as dates of service, billing codes, descriptions and itemized dollar amounts are mostly illegible in this exhibit and all charges are denied.	DENIED
Px23	Taylor Rehab 9/27/18-2/14/22	\$32,868.26
Px24	G & T Orthopaedics	\$3,190.00

TOTAL Medical Award (subject to the fee schedule in §8.2 of the Act): \$120,131.83

Finally, the Commission affirms the award of prospective left shoulder arthroscopy prescribed by Dr. Poepping.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$344.00 per week for a period of 46-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$120,131.83 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay for the prospective left shoulder arthroscopy as prescribed by Dr. Poepping under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

17WC008072

Page 11

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.

June 10, 2026/s/ Maria E. Portela

SE/

/s/ Christopher A. Harris

O: 4/23/26

49

DISSENT

I respectfully dissent from the Decision of the Majority. I would affirm the Arbitrator's Decision in its entirety. I write additionally on the TTD suspension issue. While I agree Petitioner's failure to attend the Section 12 examination provides a basis for the Respondent to suspend compensation payments "temporarily," I believe it also requires reasonable attempts by the Respondent to reschedule the examination. Because Respondent made no attempt for four years to reschedule the examination, I do not believe vacating any of the TTD benefits awarded, much less all TTD benefits awarded after the date of the missed examination, is proper.

Section 12 requires petitioners to attend medical examinations if proper expense payments have been made and received. If a petitioner fails to attend the examination, Section 12 provides that compensation payments shall be "temporarily suspended until such examination shall have taken place." 820 ILCS 305/12. In my view, Section 12 requires attempts to be made to reschedule the examination. While it is true the petitioner's attorney could have, and likely should have, requested an earlier Section 19(b) hearing, it is the Respondent who scheduled the original Section 12 examination and only the Respondent who could have rescheduled it. It did not reschedule the examination until four years later. Under these circumstances, I would affirm the Arbitrator's TTD award. For the foregoing reasons, I respectfully dissent from the Decision of the Majority.

/s/ Marc Parker**June 10, 2026**

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	17WC008072
Case Name	Claudia Espita-Perez v. Labor Network Personnel Service
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Daniel Swanson, Arbitrator

Petitioner Attorney	Alexandra Broderick
Respondent Attorney	Erin Fiore, Robert Smith

DATE FILED: 7/14/2025

/s/ Daniel Swanson, Arbitrator
Signature

INTEREST RATE WEEK OF JULY 8, 2025 4.15%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Claudia Espitia Perez

Employee/Petitioner

v.

Labor Network Personnel Services, Inc & Arysza, LLC

Employer/Respondent

Case # **17 WC 08072**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Daniel Swanson**, Arbitrator of the Commission, in the city of **Chicago**, on **5/12/25**. 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 **Nature and Extent**

FINDINGS

On the date of accident, **2/23/17**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent. The parties stipulated that Labor Network was the loaning employer with primary liability and Arzyta LLC was the borrowing employer with secondary liability.

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 **\$26,832.00**; the average weekly wage was **\$516.00**.

On the date of accident, Petitioner was **39** 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 **\$19,527.69** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

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

ORDER**Medical Expense Award**

Respondent shall pay Petitioner directly for the following outstanding gross medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: (PX 10) Lagrange Modern Pain Consultants 3/4/17-8/27/17 \$3,943.00, (PX 11) Stats Meds Rx 3/4/17-6/20/17 \$2,572.40, (PX 12) Universal Healthcare 3/6/17-8/10/17 \$20,715.00, (PX 13) Edgebrook Radiology 3/8/17-6/28/17 \$6,854.00, (PX 14) NW Chicago Medical Surgery Center 4/4/17-8/1/17 \$14,666.24, (PX 15) NW Chicago Medical 4/4/17-8/1/17 \$2,000.00, (PX 16) Network Durable Medical Equipment 4/4/17-5/23/17 \$15,400.00, (PX 17) Dr. Desai 4/4/17 -8/1/17 \$5,436.93, (PX 18) Neurological Surgery & Spine Surgery 6/28/17 \$525.00, (PX 19) Orthopaedic Specialists of the North Shore 8/11/17-10/1/18 \$2,682.00, (PX 20) RX Development 8/11/17-3/16/18 \$31, 266.09, (PX 21) Confirmative Management 8/11/17-2/21/18 \$4,698.00, (PX 22) Workers Compensation RX 9/14/17-3/15/18 \$32,463.80, (PX 23) Taylor Rehab 9/27/18-2/14/22 \$32,868.26, (PX 24) G & T Orthopaedics \$3,190.00

Temporary Total Disability Award

Respondent shall pay Petitioner temporary partial disability benefits of \$344.00 for 82&3/7 weeks, commencing March 4, 2017 through October 1, 2018, as provided in Section 8(a) of the Act.

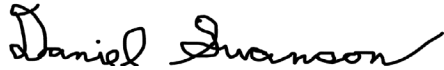
Prospective Medical Award

Respondent shall authorize and pay for the left shoulder arthroscopy as prescribed by Dr. Poepping.

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

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

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



Signature of Arbitrator

ICArbDec19(b)

JULY 14, 2025

Claudia Espitia Perez,)
)
 Petitioner,)
)
 v.)
) Case No. 17 WC 08072
)
 Labor Network Personnel Services, Inc. &)
 Aryzta, LLC.)
)
 Respondent.)

This matter proceeded to hearing on May 12, 2025 in Chicago, Illinois before Arbitrator Daniel Swanson on Petitioner's Request for Hearing under Section 19(b) of the Illinois Workers' Compensation Act "Act." Issues in dispute include causal connection, medical bills, TTD, prospective medical treatment and nature and extent, Arbitrator's Exhibit 1. Furthermore, the parties stipulated that Labor Network was the loaning employer and the party primarily liable and Aryzta LLC was the borrowing employer and has secondary liability. (Transcript at pages 10-11). The Arbitrator notes that the Petitioner testified with the assistance of a Spanish language interpreter.

Petitioner was employed by Labor Staffing and Aryzta (Transcript at page 15). Her paychecks were paid by Labor Network (Transcript at page 15). As of the date of the accident, February 23, 2017, Petitioner had been employed for approximately 2 years as a packer (Transcript at page 16). She was required to lift boxes of products weighing 20 to 30 pounds, and package bread coming out of the line (Transcript at page 16). She also put labels on the boxes and checked the

bread for quality (Transcript at page 17). Furthermore, the Petitioner testified that she works 12 hours per day for 6 day per week. (Transcript at page 16).

Prior Medical Condition

Prior to the work accident in question, she had no issues completing her job duties and had no prior history to her neck or left shoulder (Transcript at page 17).

Accident

On February 23, 2017 at approximately 10 p.m., Petitioner testified that she was opening up bread when somebody from behind her passed through with trays, that fell onto her. (Transcript at page 18). She testified that she reported the accident and was then sent to Physician's Immediate Care. (Transcript at page 18).

On cross-examination, Petitioner testified that the co-worker was carrying multiple trays which hit her back because she saw them on the floor. (Transcript at page 62). She testified that the trays were made of plastic. (Transcript at page 69).

Summary of Medical Records

Physicians Immediate Care ("Physicians")

Petitioner testified that she was referred to Physicians Immediate Care by her employer. (Tr. 19). Petitioner presented for initial medical treatment at Physicians on February 25, 2017, reporting that she was hit between her left neck and shoulder with 5-6 empty trays that a co-worker was carrying on his shoulder on February 23, 2017. (PX1, p. 3). She reported that the pain worsened the following day, and she was having difficulty performing her job due to pain. X-rays were negative. She was assessed with a contusion of the neck and muscle spasms. A light duty restriction (no lifting over 5-pounds with left arm, no pushing/pulling over 10-pounds) was recommended.

On February 28, 2017, Petitioner returned for a follow-up, reporting persistent tightness and pain in the left upper neck but no arm weakness or pain. (PX1, p. 13). The treatment plan included continuing medications and restrictions were updated to no lifting over 10-pounds with the left arm.

Modern Pain Consultants / Dr. Farooq Khan

On March 4, 2017, Petitioner reported presented to Dr. Farooq Khan for an evaluation. (PX2, p. 2). She testified she came her because she still had pain and “the company” said she was fine. (Tr. 20). She reported working as a packer working on a line at a bakery. On February 23, 2017, she was working on the line, when large baskets a coworker was carrying on his shoulder slipped and fell, landing on the left side of her neck and shoulder. She felt immediate pain in the cervical, upper back, and shoulder regions.

She reported working the next day, working light duty, but once she switched back to packing boxes, developed increasing pain in the left neck and left shoulder. She continued to work on light duty restrictions and recently developed numbness and tingling in the left upper extremity radiating towards the left hand. She was assessed with thoracic, cervical, and shoulder pain, as well as cervical radiculitis. Medication was prescribed as well as an “off work” restriction. Petitioner was also referred for an MRI.

From March 6, 2017 through April 25, 2017, Petitioner underwent a course of therapy with Universal Healthcare Physical Therapy. (PX3).

On March 8, 2017, an MRI of the cervical spine was performed revealing 1-2 mm posterior disk bulges at C4-5, C5-6, and C6-7 indenting the thecal sac. (PX4, p. 2; PX7, p. 71)

On March 28, 2017, Petitioner returned with unchanged pain complaints, including cramps in her upper back and neck, radiating into the bilateral shoulders, and new headaches. (PX2, p. 6). The report notes mild disc bulging at C4-7 per the MRI, and an unremarkable lumbar spine MRI. (PX4, p. 4). Petitioner reported improvement with low back pain in therapy, but exacerbation of cervical symptoms. A cervical epidural injection was considered if the pain did not improve in four (4) weeks.

On April 4, 2017, Petitioner underwent a cervical epidural steroid injection with 70% initial relief and 50-60% sustained relief. (PX2, p. 11; PX5, p. 2). Petitioner testified that she received some improvement from the injection. (Tr. 21). Therapy provided moderate benefit and medications were effective, but she had difficulty lifting with her left upper extremity. A repeat cervical epidural was recommended, and she was to continue therapy with transition to home exercise.

At the April 25, 2017, follow-up, Petitioner's pain complaints were largely unchanged. (PX2, p. 16). She noted that her lumbar pain was more severe than the cervical pain. She reported therapy helped with the cervical pain but now exacerbated her lumbar pain.

On May 2, 2017, Petitioner underwent a second cervical epidural injection and returned to Dr. Khan on May 23, 2017. (PX2, p. 21, 24; PX5, p. 8). She reported substantial relief from the cervical epidural with no need for pain medications. Petitioner testified she received "a little" relief from the injection. (Tr. 21-22). She completed therapy with some benefit. She was referred to a spine surgeon for a second opinion and recommended for another cervical epidural.

On May 30, 2017, Petitioner presented for her third cervical epidural injection. (PX2, p. 27; PX5, p. 12). She followed up after on June 20, 2017, and reported improvement but continued to experience radiating pain with numbness and tingling. (PX2, p. 30).

Then on June 26, 2017, she was evaluated by Dr. Sean Salehi. (PX6, p. 2). She reported pain in the left shoulder radiating up the neck and down the shoulder blade as well as tingling down the left arm, and no relief from therapy or injections. Petitioner testified on re-cross that contrary to the report in the medical note, she did get relief from the injections. (Tr. 67-68). Dr. Salehi noted that the cervical spine MRI did not reveal any significant pathology. He ordered an MRI of the left shoulder, recommended a left shoulder injection, and therapy for the shoulder pain

An MRI of the left shoulder was performed on June 28, 2017, showing rotator cuff intact but with mild inflammation around the distal supraspinatus tendon, consistent with tendinitis and/or bursitis. (PX4, p. 6; PX7, p. 60-70).

After the evaluation with Dr. Salehi, Petitioner presented on July 18, 2017, with severe left shoulder pain, worse than the cervical pain. The plan was for an injection to the left shoulder at the next visit as well as therapy for the shoulder. (PX2, p. 34).

From July 19, 2017, through August 10, 2017, Petitioner underwent a course of therapy at Universal Healthcare focused on the left shoulder. (PX3).

Petitioner underwent the left shoulder injection on August 1, 2017, and followed up on August 29, 2017, reporting substantial improvement in the left shoulder pain. (PX2, p. 40; PX5, p. 16). Petitioner testified

that she noticed “a little” improvement following the injection. (Tr. 23). The plan was to continue therapy for the left shoulder, follow-up with Dr. Silver to discuss surgery, and remain off work.

Orthopedics Specialist of the NorthShore / Dr. Ronald Silver

On August 11, 2017, Petitioner presented to Dr. Ronald Silver for an initial evaluation. (PX7, p. 2). She reported a work injury from February 23, 2017, when a “plastic case of groceries fell on her left shoulder and cervical spine” resulting in pain and limited range of motion. X-rays were normal but the MRI showed rotator cuff inflammation. She was diagnosed with rotator cuff impingement and prescribed medications and was considered a candidate for arthroscopic surgery. She was also placed off work and recommended therapy.

She returned for a follow-up on September 15, 2017, reporting continued pain and limited motion. (PX7, p. 4). At this point, Dr. Silver opined that all conservative care was exhausted, and Petitioner was awaiting approval for arthroscopic surgery.

Petitioner continued to follow-up with Dr. Silver, generally, a monthly basis through October 1, 2018, with Dr. Silver continuing to recommend restricted work and surgery as well as refill medications. (PX7). The toxicology reports, however, had results that were inconsistent with the prescribed medications. (PX7, p. 29-32).

Beginning on February 1, 2018 and continuing through February 14, 2022, Petitioner underwent a course of therapy/chiropractic treatment at Taylor Rehabilitation and Wellness Center. (PX8).

G&T Orthopaedics

On May 28, 2021, Petitioner presented to Dr. Poepping for an evaluation regarding her left shoulder pain. (PX8, p. 2). She reported working in a bread factory, when baskets full of bread fell off a coworker’s shoulder and landed on Petitioner’s left superior shoulder. She reported persistent pain and noted conservative treatment including injections (“help somewhat”) and therapy (“not helped”). Petitioner reported that she was currently working as a packer in a cookie factory.

Dr. Poepping noted that the symptoms seem centered around the AC joint, which would be expected given the direct blow to the superior shoulder. He reviewed the MRI reports, over four (4) years old, which showed some subacromial bursitis but were otherwise normal. He opined that Petitioner was a candidate for left shoulder arthroscopy, subacromial decompression, distal clavicle excision, and debridement. No work restrictions were prescribed and Petitioner was instructed to continue regular work.

Petitioner followed up on August 27, 2021, reporting that her symptoms were unchanged. (PX8, p. 3). She was to continue on regular work and return for a follow-up in three (3) months. (PX8, p. 3).

She then followed up again on November 19, 2021, February 18, 2022, May 27, 2022, August 5, 2022, and November 18, 2022, reporting that her symptoms remained the same. (PX8). She was discharged on November 18, 2022, pending approval of the surgery. (PX8, p. 8).

Petitioner returned to Dr. Poepping on August 23, 2024, for an additional follow-up. She reported still having pain in the lateral shoulder. An injection was administered and it was noted that she was pending approval of surgery.

Rising Utilization Review / Section 8.7

At trial, Respondent admitted into evidence, without objection, Section 8.7 Utilization Review Report from Dr. Mohammad Khan with Rising dated July 19, 2017. (RX 3). The following treatment was non-certified per the Utilization Review:

- Therapy – 6 sessions from March 6, 2017 through April 25, 2017;
- Cervical Epidural with Trigger Point Injections – May 30, May 2, 2017;
- Pain Management Consult and Follow-Up Visits – March 4, March 28, April 18, April 25, and May 30, 2017;
- VascuTherm/Game Ready Unit with Wrap – April 4, 2017 through May 23, 2017;
- Terocin Patches – March 4, 2017;
- Docusate Sodium 100mg – March 4, April 18, 2017;
- Cyclobenzaprine 7.5mg - #48 on March 4, 2017, and #90 on April 18, 2017;
- Lumbar and Cervical Spine MRIs – March 8, 2017;
- Left cervical interlaminar epidural steroid injection – April 4, 2017;
- Transportation to all office visits, therapy, and procedures;
-

The Arbitrator notes the following basis provided by Dr. Khan for non-certification of treatment in according with Official Disability Guidelines (“ODG”):

Therapy

Twelve (12) therapy visits are indicated for the treatment of radiculopathy and although Petitioner’s symptoms were consistent with radiculopathy, she had minimal physical examination findings. Therefore, therapy was reasonable for initial treatment, but only the first 12 visits. (RX3, p. 17-18).

Cervical Epidural with Trigger Injections

An epidural injection is used to treat symptomatic nerve root compression with trigger point injections used for myofascial pain syndrome. As there was no nerve root compression or myofascial pain syndrome, the epidural and trigger point injections were not medically necessary and non-certified. (RX3, p. 17).

Pain Management Consult and Follow-Up Visits

The only findings on physical examination were consistent with muscle spasm/strain, therefore, pain management evaluation and treatment was not appropriate. (RX3, p. 16).

VascuTherm/Game Ready Unit with Wrap

A Vascutherm/game ready unit with wrap is useful to prevent swelling after surgery. However, Petitioner did not have surgery here and therefore the recommended treatment is not medically necessary. (PX3, p. 16).

Terocin Patches

Topical salicylate may be used for pain, but topical lidocaine is indicated only as a second line for neuropathic pain or postherpetic neuralgia. The patches are therefore not medically necessary as there is no spinal compression or nerve root impingement noted on the cervical spine MRI. (PX3, p. 15).

Docusate Sodium 100mg

Stool softeners are indicated to prevent constipation induced by narcotic medication, which Petitioner was not taking. Therefore, this medication is not medically necessary. (PX3, p. 15).

Cyclobenzaprine 7.5mg

Muscle relaxants are appropriate for short-term use in patients with an acute musculoskeletal injury and should be limited to two (2) weeks. Therefore, no more than 42 tablets should have been dispensed. (RX3, p. 14).

MRIs

An MRI of the cervical spine is indicated when there is trauma and severe radiculopathy. Petitioner had no clinical examination findings of significant radiculopathy and, therefore, the MRI was not medically necessary. (RX 3, p. 10-11). Similarly, an MRI of the lumbar spine is indicated when there are neurologic findings referable to the lumbar spine, which were not present here. (RX 3, p. 11-12).

Respondent's Section 12 Examiner, Dr. Brian Forsythe

Dr. Brian Forsythe, a partner at Midwest Orthopaedics at Rush, testified via evidence deposition on February 16, 2024. (RX 1, p.1-2). Dr. Forsythe is a board-certified orthopedic surgeon specializing in shoulder, knee, and sports medicine surgery, licensed to practice in Illinois, Indiana, and Massachusetts. (RX 1, p. 3). He completed his premedical studies at Brown University, medical school at University of Pennsylvania, and residency at Harvard University. (RX 1, p. 3). He performs over 700 surgical procedures per year with half being shoulder related and regularly conducts independent medical examinations (IMEs). (RX 1, p. 3).

Dr. Forsythe conducted an IME of Petitioner with the assistance of a Spanish interpreter on March 24, 2022. (RX1, p. 4). Petitioner reported an injury of February 23, 2017, wherein a load of trays fell on her left neck and shoulder. (RX 1, p. 5). She presented for initial care with Physicians and was diagnosed with a neck contusion. (RX 1, p. 5).

In connection with the examination, Dr. Forsythe reviewed medical treatment records, including the MRI imaging from June 28, 2017, which showed rotator cuff tendinitis and/or bursitis (“inflammation of the bursa tissue and tendon tissue just on top of the rotator cuff”). (RX 1, p. 6). He also performed a physical examination of Petitioner, noting full range of motion but severe symptom magnification during active movement testing. (RX 1, p. 6-7).

Dr. Forsythe diagnosed Petitioner with a resolved left shoulder contusion, opining that the medical treatment received was excessive. (RX 1, p. 7, 9). Typically, conditions such as Petitioner’s would resolve with physical therapy two to three times a week for at most eight to twelve weeks, and sometimes injections. (RX 1, p. 9). Petitioner was at maximum medical improvement for the shoulder contusion and did not require further medical care or work restrictions. (RX 1, p. 8).

Regarding the surgery recommended and diagnosis of rotator cuff impingement by Drs. Silver and Poepping, Dr. Forsythe testified that the diagnosis refers to mechanical impingement between the rotator cuff bursa and acromion and coracoacromial arch. (RX1, p. 8).

On cross examination, Dr. Forsythe testified that he only examined Petitioner concerning the shoulder and performed a quick neck exam as part of the normal shoulder examination. (RX 1, p. 9). He reiterated his opinion that Petitioner had a resolved left shoulder contusion and found no evidence of an intervening accident. (RX 1, p. 9, 10). Dr. Forsythe found that some of the physical examination findings could be

associated with Waddell findings but disagreed with the statement that Waddell findings have been found to not be valid in non-Anglo cultures. (RX 1, p. 10).

Petitioner's Current Condition

Petitioner testified that she continued to experience pain and limitations in her shoulder affecting her ability to work. (Transcript at page 27). She testified that after leaving Labor Network, she has worked various jobs including at a cookie factory, a candy factory, and currently at a laundromat. (Transcript at page. 28).

On direct examination, she testified that she started working at the cookie factory in February 2021, after she first saw Dr. Poepping. (Transcript at page 28). She testified that she asked him if she could go back to work and he said yes. (Transcript at 29). She testified that she worked at the candy factory for three (3) months. (Transcript at page.29). She testified that she currently works at a laundromat, putting sheets into a machine. (Transcript at page 30). She testified that her shoulder hurts after two (2) to three (3) hours. (Transcript at page 30).

Petitioner testified that she wants to proceed with the recommended surgery because she wants to be "100 percent". (Transcript at page 27). She testified that both Dr. Silver and Dr. Poepping advised that the surgery would provide 100 percent relief for her left shoulder condition. (Transcript at pages 40-41).

CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed the Petitioner's demeanor during the hearing and finds her be a credible witness. Petitioner was forthright and consistent in answering all questions posed on direct and cross-examination. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

The Arbitrator took into account Petitioner's testimony at Arbitration and deemed her to be an honest, credible and reliable witness. The Arbitrator finds Petitioner met the burden of proof and established her neck, back and left shoulder condition of ill-being is causally related to the 2/23/17 work accident.

In finding causal connection, the Arbitrator takes into account the chain of events, the consistency of Petitioner's complaints of left shoulder and knee pain, and the credible opinions of Dr. Khan, Dr. Salehi, Dr. Silver, and Dr. Poepping.

It is well-established law that proof of prior sound health and change immediately following and continuing after an injury may demonstrate that an impaired condition was due to the injury. Navistar International Transportation Corporation, 315 Ill. App. 3d 1197, 1206 (2000). The Court specifically stated that a causal connection between work duties and a condition may be established by a chain of events. This includes the Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. Id.

Petitioner testified that prior to the date of accident she never had any complaints to her neck or left shoulder (Transcript at page 17). She was able to complete her job duties without issue (Transcript at page 17). Dr. Khan diagnosed the Petitioner with work related myofascial pain, cervicogenic radiculitis, pain in thoracic spine and pain in the left shoulder (PX 2). He prescribed cervical injections which the Petitioner underwent

.

She was referred to a spine surgeon, Dr. Salehi, who opined that the pain was stemming from the left shoulder and ordered a left shoulder MRI which the radiologist read as showing "inflammatory fluid seen surrounding the distal supraspinatus portion of the rotator cuff tendon probably tendonitis and/or bursitis." She was then referred to orthopedic physician Dr. Silver.

Dr. Silver noted the MRI demonstrated inflammation of the rotator cuff that was consistent with rotator cuff impingement noted clinically, including positive Neer's and Hawkins' tests.

Dr. Poepping as well noted positive Neer's and Hawkins' tests and diagnosed the Petitioner with left shoulder acromioclavicular joint synovitis and left shoulder impingement.

Petitioner's physicians' opinions of Dr. Salehi, Dr. Silver and Dr. Poepping are all consistent. Dr. Salehi believed that the pain was stemming from the left shoulder and that care should be transferred to orthopedics. Both Dr. Silver and Dr. Poepping diagnosed impingement syndrome, noted the positive Neer's and Hawkins findings, and noted the inflammatory fluid seen surrounding the distal supraspinatus portion of the rotator cuff tendon, as did the radiologist.

Dr. Forsythe's diagnosis and MMI opinions are not supported by the record. It is undisputed that Petitioner was asymptomatic prior to the work accident. Dr. Forsythe himself noted that Petitioner had positive Neer's and Hawkins' impingement. Dr. Silver and Dr. Poepping's MRI interpretations were in line with the radiologist's reading. Dr. Forsythe stated he agreed with the radiologist's findings. Only Dr. Forsythe found symptom magnification, and that the objective complaints and subjective complaints did not match. Dr. Forsythe is the only doctor to have found the Petitioner to have suffered merely a strain. The two doctors who saw the Petitioner on multiple occasions rather than the IME would be best equipped to judge symptom magnification.

The Arbitrator finds Petitioner's physicians Dr. Khan, Dr. Silver, Dr. Salehi, and Dr. Poepping to be more credible and trustworthy and thus finds Petitioner's current condition of ill being as to her neck, back and left shoulder to related to the work accident of February 23, 2017.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "...for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury..." A claimant has the burden of proving that the medical services were

necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds the record as a whole to support a finding that all care rendered through the date of Arbitration was reasonable, necessary, and causally related to the work accident.

Pursuant to Section 8.7(i)(3) of the Act, once the utilization review process is invoked by Respondent, “An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section.”

Respondent presented a retrospective utilization review written by Dr. Mohammed Khan for the care recommended by Dr. Khan of Lagrange Modern Pain for dates of service March 4, 2017 through May 30, 2017.. The utilization review certified 12 therapy session, some cyclobenzaprine, meloxicam and pantoprazole, and denied all follow up pain visits, injections, other medications, transportation, DME. and further therapy.

When making retrospective reviews, utilization review programs shall base reviews solely on the medical information available to the attending physician or ordering provider at the time the health care services were provided. 820 ILCS 305/8.7e2. The utilization review renders an opinion on treatment rendered through May 30, 2017. It states that medical records have been reviewed through June 5, 2017. Here, the utilization review clearly uses records that were not available to the provider when making the recommendations. Thus, the utilization review is invalid and must be stricken. Respondent presented no other utilization reviews.

The Arbitrator finds that the medical services that were provided to Petitioner 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 Exhibits 10 through 24, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. See also Perez v. Illinois Workers' Compensation Comm'n, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524, as follows:

PX 10 Lagrange Modern Pain Consultants 3/4/17-8/27/17 \$3,943.00
 PX 11 Stats Meds Rx 3/4/17-6/20/17 \$2,572.40
 PX 12 Universal Healthcare 3/6/17-8/10/17 \$20,715.00
 PX 13 Edgebrook Radiology 3/8/17-6/28/17 \$6,854.00
 PX 14 NW Chicago Medical Surgery Center 4/4/17-8/1/17 \$14,666.24
 PX 15 NW Chicago Medical 4/4/17-8/1/17 \$2,000.00
 PX 16 Network Durable Medical Equipment 4/4/17-5/23/17 \$15,400.00
 PX 17 Dr. Desai 4/4/17 -8/1/17 \$5,436.93
 PX 18 Neurological Surgery & Spine Surgery 6/28/17 \$525.00
 PX 19 Orthopaedic Specialists of the North Shore 8/11/17-10/1/18 \$2,682.00
 PX 20 RX Development 8/11/17-3/16/18 \$31,266.09
 PX 21 Confirmative Management 8/11/17-2/21/18 \$4,698.00
 PX 22 Workers Compensation RX 9/14/17-3/15/18 \$32,463.80
 PX 23 Taylor Rehab 9/27/18-2/14/22 \$32,868.26
 PX 24 G & T Orthopaedics \$3,190.00
 TOTAL \$179,280.72

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

Respondent shall approve and pay for the left shoulder arthroscopy and necessary post-operative care as prescribed by both Dr. Silver and Dr. Poepping as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator, having carefully analyzed the medical opinion testimony of Dr. Forsythe, found the opinions of Petitioner's treating physicians more credible and trustworthy, awards the prospective left shoulder arthroscopy as recommended by both Dr. Silver and Dr. Poepping. Both physicians found that she had positive Neer's and Hawkins tests and diagnosed her with impingement syndrome. The noted as

did the radiologist that on the left shoulder MRI an “inflammatory fluid seen surrounding the distal supraspinatus portion of the rotator cuff tendon probably tendonitis and/or bursitis”. It was further noted that she had failed conservative care including injections and physical therapy. The Arbitrator therefore awards the prospective medical of the left shoulder arthroscopy.

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

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm’n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant’s condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers’ Comp. Comm’n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm’n, 138 Ill.2d 107, 118 (1990).

The Arbitrator awards TTD benefits from March 4, 2017 through October 1 2018, a period of 82 3/7 weeks at a TTD rate of \$344.00, totaling \$28,355.34. Additionally, the Arbitrator notes with interest that the Petitioner failed to attend an IME with Dr. Forsythe on January 25, 2018. The Petitioner testified that she was aware of the appointment but could not go due to depression. However, there were not any no-show fees for the missed IME submitted into evidence and the IME was not rescheduled until 4 years later on March 24, 2022. The Arbitrator finds that the failure to attend the IME on January 25, 2018 was insufficient to terminate TTD under the totality of the circumstances.

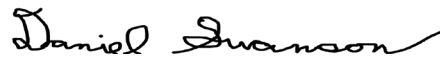
Moreover, the Petitioner testified to working at a candy factory and the Pure cookie factory jobs after May of 2021 and Dr. Poepping noted on May 28, 2021 that Petitioner was working. The Petitioner testified that she is currently working in a laundromat with no lifting involved.

Significantly, the Petitioner had not returned for an updated work status note since her last visit with Dr. Silver on October 1, 2018, which will be utilized as the termination point for TTD entitlement. Therefore, the Arbitrator awards \$28,355.43 in TTD, less the stipulated credit of \$19,527.69, for a net award of \$8,827.74.

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

The Arbitrator having awarded the prospective left shoulder arthroscopy procedure, finds that this matter is not ripe for a nature and extent finding.

It is so ordered

A handwritten signature in black ink that reads "Daniel Swanson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Arbitrator Daniel Swanson

JULY 14, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC026318
Case Name	Jason Waller v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0179
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 6/11/2026

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON WALLER,

Petitioner,

vs.

NO: 24WC026318

STATE OF ILLINOIS - MENARD
 CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

Petitioner filed his Application for Adjustment of Claim on or about September 26, 2024, alleging he sustained injuries arising out of and in the course of his employment on September 23, 2024. The matter proceeded to a hearing before Arbitrator William Gallagher on August 4, 2025. At hearing the parties disputed the issues of accident, notice, causal connection, and nature and extent of the injuries. The Arbitrator issued his Decision on September 19, 2025, finding: Petitioner suffered an accidental injury arising out of the course of his employment with Respondent; he gave timely notice of the accident; his bilateral carpal and cubital tunnel syndromes were causally related to the accident; and he sustained 10% losses of use of the left and right hands, and 12.5% losses of use of the left and right arms under §8(e) of the Act. The Arbitrator also directed Respondent to pay reasonable and necessary medical services as set forth in PX1, pursuant to §8(a) and §8.2 of the Act.

On September 29, 2025, Respondent timely filed a Petition for Review of the Arbitration Decision before the Commission. In its Petition for Review, Respondent raised the issues of accident, notice, causation, and nature and extent of disability. On September 30, 2025, Petitioner timely filed a cross Petition for Review of the Arbitration Decision before the Commission, raising only the issue of the nature and extent of the disability.

The Return Date on Review was set for December 5, 2025. Respondent did not file a Statement of Exceptions in support of its Petition. Petitioner did file a Statement of Exceptions on

January 2, 2026, and a Response to Respondent's absent Statement of Exceptions on January 20, 2026. Respondent did not file a Response to Petitioner's Statement of Exceptions.

The failure of any party to file a Statement of Exceptions and Supporting 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.” 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 Constr./Illinois Ins. Guar. Fund vs. Illinois Workers' Comp. 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 Supporting 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 Supporting Brief. *Id.* The employer and the Guaranty Fund argued on appeal that the failure to file a Statement of Exceptions and Supporting Brief constituted a waiver of all issues and therefore the Commission's modification of the Arbitrator's 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 evidence when reviewing a decision of an Arbitrator. The Court noted that administrative agency rules which are in conflict with a 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 Supporting 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.” *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 Supporting 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 Supporting Brief “shall constitute a forfeiture of the right to oral argument by that party.” *Id.*

In the case at bar, the Return Date on Review was set for December 5, 2025. Accordingly, Respondent's Statement of Exceptions and Supporting Brief was due on or before January 5, 2026, and Petitioner's Response Brief was due on or before January 20, 2026. As a reviewing party, Petitioner had an option to present oral argument based upon his Petition for Review. Also, Petitioner could have requested oral argument in response to Respondent's Statement of Exceptions as Section 9070.40(d) of the Rules provides: “[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.” 50 Ill. Adm. Code 9040.70(d). In the instant case, however, Petitioner waived his option to present oral arguments.

The Commission also notes that Respondent disputed notice before the Arbitrator, and that the Arbitrator's Decision records that the Respondent did not provide a clear basis for its dispute on the topic of notice. Respondent is reminded that issues not adequately raised before the Arbitrator may be deemed forfeited before the Commission. *Robert Bounds v. C&B Steel Corp.*, 13 IWCC 0864.

However, 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 the parties' Petitions for Review on May 5, 2026. The Commission also considered Petitioner's Response Brief.

The Commission considers the issue of causal connection differently than the Arbitrator. In a repetitive motion claim Petitioner is obligated to meet their burden of proof on causation with the opinion of a medical expert. “Although medical testimony as to causation is not necessarily required [citation], 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 claimant's work activities caused the condition complained of.” *Nunn v. Industrial Comm'n.*, 157 Ill. App. 3d 470, 478 (4th Dist. 1987). And, “[t]he right to recover benefits cannot rest upon speculation or conjecture.” *Id.* at 479.

Petitioner introduced the medical records of Dr. Matthew Bradley, Petitioner's treating surgeon, and the written opinions contained therein. Respondent omitted to introduce any medical opinion to rebut the expressed opinions of Dr. Bradley. It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Comp. Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999).

The Commission adopts the facts found by the Arbitrator with one exception. Reviewing the September 23, 2024, causal opinion of Dr. Bradley, the Commission finds that Dr. Bradley's causal opinion was as follows:

"If the information that has been provided to me as of this date by Mr. Waller is accurate, then it is my medical opinion that the 14 years he has worked for the Illinois Department of Corrections at the Menard facility has at least contributed to, and is therefore noted to be causally related to, his current *right* carpal and cubital tunnel syndrome and need for further work up, evaluation, and treatment as well as potential intervention if indicated." (Emphasis added.) PX 3.

This explicit medical opinion, un rebutted by any other opinion, was sufficient to meet Petitioner's minimum burden of proof. However, after reviewing the record in its entirety, the Commission finds the record lacks explicit causal opinions to either bilateral carpal and cubital tunnel syndromes or to left carpal and cubital tunnel syndromes, and that Dr. Bradley's stated causal opinion was limited to the right carpal and cubital tunnel syndromes only.

Consistent with the holdings in *Nunn*, the Commission finds that Petitioner did not meet his burden of proof that his left-sided injuries were caused by his employment. For this reason, the Commission modifies the causal connection finding of the Arbitrator and affirms only that there was a causal connection between the work duties and the right carpal tunnel and cubital tunnel syndromes. The Commission finds Petitioner did not meet his burden of proof as to the left carpal and cubital tunnel syndromes and denies all left-sided benefits.

Consequently, the Commission also modifies the awards of medical treatment and Permanent Partial Disability. The Commission finds Petitioner reached MMI on November 7, 2024, when he was seen for follow-up of his right surgical releases and his symptoms had resolved. All medical treatment after November 7, 2024, is denied. Likewise, the Commission affirms and adopts the PPD award of 10% loss of use of the right hand, and 12.5% loss of use of the right arm, but denies all PPD for the left hand and the left arm.

Finally, the Commission observes Petitioner's personal identity information was unredacted in the exhibits. The Commission cautions Counsel to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 19, 2025, is hereby affirmed and adopted with the changes set forth above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services for the right upper extremity as identified in Petitioner's Exhibit 1 through November 7, 2024, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,045.92 per week for a period of 50.625 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the right arm, and 10% of the right hand.

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.

June 11, 2026

O: 5/5/26
AHS/ps
051

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

SPECIAL CONCURRENCE

I concur with the majority's decision modifying the Arbitrator's decision to affirm and adopt the PPD award of 10% loss of use of the right hand and 12.5% loss of use of the right arm, and deny all PPD for the left hand and the left arm. I further concur with the majority's decision finding Petitioner reached MMI on November 7, 2024, and denying medical benefits for all medical treatment after November 7, 2024. I write separately, however, to emphasize the compensability determination in this repetitive trauma claim might have been different had Respondent filed a Statement of Exceptions and Supporting Brief.

As noted by the majority, 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 Supporting Brief. *Jetson Midwest Maintenance vs. Industrial Comm'n*, 296 Ill. App. 3d 314, 694 N.E.2d 1037 (1998). Additionally, while a claimant's failure to file a Statement of Exceptions acts as a waiver of his right to an oral argument, the Commission is nevertheless required by §19(e) of the Act to review all questions of law or fact which appear from the transcript of evidence. That being said,

the absence of a supporting brief presenting the evidence adduced at hearing and legal arguments supporting a party's claims or defenses makes it difficult to review the record and identify reasons, if any, for viewing the evidence or law differently than the arbitrator on review. This is particularly true in cases involving claims alleging injuries predicated on repetitive trauma which must be decided on a case-by-case basis.

For the above reasons, I concur with the majority's opinion modifying the Arbitrator's decision to affirm and adopt the PPD award of 10% loss of use of the right hand and 12.5% loss of use of the right arm, deny all PPD for the left hand and the left arm, and deny medical benefits for all treatment after November 7, 2024.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

June 11, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC026318
Case Name	Jason Waller 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	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 9/19/2025

/s/ William Gallagher, Arbitrator
Signature

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



September 19, 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF SEPTEMBER 16, 2025 3.72%

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

Jason Waller
 Employee/Petitioner

Case # 24 WC 26318

v.

Consolidated cases: n/a

State of IL/Menard C.C.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on August 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 _____

ICArbDec 2/10 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On September 23, 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 \$100,288.50; the average weekly wage was \$1,928.62.

On the date of accident, Petitioner was 39 years of age, married with 2 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, for medical services provided to Petitioner, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$1,045.92 per week for 101.25 weeks because the injury sustained caused the 10% loss of use of the right hand; 10% loss of use of the left hand; 12.5% loss of use of the right arm; and 12.5% loss of use of the left arm, as provided in Section 8(e) of the Act.

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

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



William R. Gallagher, Arbitrator

ICArbDec p. 2

SEPTEMBER 19, 2025

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged date of accident (manifestation) of September 23, 2024, and that Petitioner sustained an injury to "Bilateral wrists/hands, bilateral elbows, arms" as a result of "Repetitive duties" (Arbitrator's Exhibit 2). This case was tried for a final award and Petitioner sought an order for payment of medical bills as well as permanent partial disability benefits (Arbitrator's Exhibit 1).

Petitioner worked for Respondent for approximately 15 years. Petitioner worked as a Correctional Officer for seven years and was then promoted to Correctional Sergeant. In 2022, Petitioner was promoted to Correctional Lieutenant which was the rank/position held by him at the time of trial.

Petitioner testified that when he worked as a Correctional Officer, he performed numerous repetitive activities involving the use of both hands/arms. This included bar rapping, shakedown, property box inspections, cuffing/uncuffing inmates, and locking/unlocking doors and chuckholes with Folger Adams keys. Petitioner stated that when he was promoted to Correctional Sergeant, he continued to perform the duties of a Correctional Officer, but had to do more paperwork.

As a Correctional Lieutenant, Petitioner was still required to perform repetitive activities involving the use of both hands/arms. Petitioner testified that, as a correctional Lieutenant, he no longer performs bar rapping and his use of Folger Adams keys is less than it was previously, presently just four to five times a day. Petitioner stated he is required to do an extensive amount of paperwork which requires typing on a computer and he locks/unlocks padlocks on a daily basis.

Petitioner tendered into evidence a Job Site Evaluation performed at Menard Correctional Center on September 30, 2008. The purpose of the evaluation was to identify risk factors for disorders such as carpal tunnel syndrome. The evaluator analyzed the various hand intensive activities performed by the staff and opined the repetitions were well below that which would be considered a risk factor (Petitioner's Exhibit 9).

Petitioner tendered into evidence a Job Site Analysis for a Correctional Lieutenant which was completed on March 21, 2011. It noted the job required frequent lifting, pulling open doors, locking/unlocking doors, opening chuckholes, and cuffing/uncuffing inmates (Petitioner's Exhibit 10).

Petitioner tendered into evidence a Post Description for Cellhouse Officers which described the required duties. They included pulling cell doors, checking locks, searching cells, bar rapping, shakedown, and controlling movement of inmates, etc. (Petitioner's Exhibit 11).

Petitioner also tendered into evidence a video dated July 25, 2017, of various tasks performed at Menard Correctional Center. The video was approximately 30 minutes long and it showed officers bar rapping, locking/unlocking doors/chuckholes and locks. At one point, when the officer attempted to unlock a door with a Folger Adams key, the lock got stuck and the officer had to turn the key multiple times (Petitioner's Exhibit 12).

Petitioner testified that, over time, he developed symptoms of numbness/tingling in both of his upper extremities. Petitioner stated he did not have diabetes, gout, hypothyroidism, or rheumatoid arthritis.

Petitioner initially sought medical treatment on September 23, 2024 (date of manifestation), from Dr. Matthew Bradley, an orthopedic surgeon. At that time, Petitioner complained of numbness/tingling of all five fingers of both hands, right slightly more than left. Petitioner advised he had worked for the Department of Corrections and he stated his job required the use of Folger Adams keys as well as bar rapping, but the history of bar rapping occurred primarily when he worked as a Correctional Officer. Petitioner denied participating in any hobbies which required significant use/vibration to his hands (Petitioner's Exhibit 3).

Dr. Bradley opined Petitioner had findings consistent with carpal and cubital tunnel syndrome and directed Petitioner to perform home exercises. He also ordered EMG/nerve conduction studies. In respect to causality, Dr. Bradley opined Petitioner's job duties at least contributed to the development of his carpal tunnel and cubital tunnel syndrome conditions (Petitioner's Exhibit 3).

The day after Petitioner was evaluated by Dr. Bradley, September 24, 2024, Petitioner reported the accident to Respondent. An incident report and an Employee's Notice of Injury, were completed and signed by Petitioner on that date. The Employee's Notice of Injury described the accident as being "Heavy repetitive use of hand in corrections for past 13 yrs 5 months" (Petitioner's Exhibit 8; Respondent's Exhibit 1).

On October 14, 2024, Petitioner was evaluated by Dr. Daniel Phillips, a neurologist. At that time, Dr. Phillips performed EMG/nerve conduction studies on both of Petitioner's upper extremities. The diagnostic studies were positive for severe neuropathy across both the right and left carpal tunnels, and mild ulnar neuropathy at the right and left cubital tunnels (Petitioner's Exhibit 4).

Petitioner was subsequently seen by Dr. Bradley on October 14, 2024. At that time, Dr. Bradley reviewed the EMG/nerve conduction studies. He diagnosed Petitioner with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Bradley recommended Petitioner undergo corrective surgery (Petitioner's Exhibit 3).

Dr. Bradley performed surgery on Petitioner's right upper extremity on October 25, 2024. The procedure consisted of an open right carpal tunnel release and an open right cubital tunnel release with and ulnar nerve transposition (Petitioner's Exhibit 6).

Following surgery, Petitioner was seen by Dr. Bradley on November 7, 2024. At that time, Petitioner advised his pre-operative symptoms had mostly resolved on the right, but the left side was unchanged. Dr. Bradley indicated he would proceed with surgery on the left upper extremity (Petitioner's Exhibit 3).

Dr. Bradley performed surgery on Petitioner's left upper extremity on November 13, 2024. The procedure consisted of an open left carpal tunnel release and an open left cubital tunnel release with an ulnar nerve transposition (Petitioner's Exhibit 6).

Petitioner was last seen by Dr. Bradley on December 2, 2024. At that time, Petitioner advised his pre-operative symptoms had all improved or resolved. Dr. Bradley released Petitioner to return to work and opined he was at MMI (Petitioner's Exhibit 3).

Petitioner acknowledged he was able to return to work to his job with Respondent and perform all of his job duties. Petitioner's bilateral upper extremity conditions have improved following the surgeries, but, at trial he testified he still has some symptoms. Specifically, Petitioner testified he has experienced a loss of strength which he notices when performing certain tasks, primarily any heavy lifting. The loss of strength affects both his hands and elbows. Petitioner stated that at the end of a work shift, his elbows will be a little sore. When dealing with a combative inmate, Petitioner states he will usually switch arms while he is in the process of transporting them.

Shaun Gee testified at trial. He stated Petitioner was a conscientious employee and the description of his activities was consistent with the activities he has performed.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury to his left and right upper extremities arising out of and in the course of his employment by Respondent which manifested itself on September 23, 2024.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony regarding his job duties which required the repetitive use of both of his upper extremities was credible and un rebutted.

Petitioner's treating physician, Dr. Bradley, opined that Petitioner's job duties contributed to the diagnosis of carpal tunnel and cubital tunnel syndrome. There was no expert medical opinion to the contrary.

The Job Site Evaluation, Job Site Analysis for a Correctional Lieutenant, Post Description for Cellhouse Officers and video tendered into evidence confirmed that Correctional Officers performed job duties which required the repetitive use of both upper extremities. The Arbitrator was not persuaded by the opinion of the individual who performed the Job Site Evaluation that the repetitive duties were well below what would be considered a risk factor.

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

The Arbitrator concludes Petitioner gave notice to Respondent of his having sustained a repetitive trauma work-related injury within the time required by the Act.

In support of this conclusion the Arbitrator notes following:

The date of accident (manifestation) alleged in the Application was September 23, 2024. It was undisputed Petitioner gave notice to Respondent the following day, September 24, 2024.

It was not clear to the Arbitrator what Respondent's basis was for disputing notice; however, it appears that Respondent was taking the position that the date of accident (manifestation) was actually much earlier than the alleged date of accident (manifestation) alleged in the Application of September 23, 2024.

Generally, the manifestation date of a repetitive trauma injury is either the date on which the employee receives medical treatment or the date on which the employee can no longer perform his work activities. *Durand v. Industrial Commission*, 862 N.E.2d 918, 926 (Ill. 2006). In this case, Petitioner first sought medical treatment on September 23, 2024. There was no evidence Petitioner ever sought medical treatment for his bilateral upper extremity symptoms any time prior to that date.

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

Based upon the Arbitrator's conclusion of law in disputed issues (C) and (F), the Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 10% loss of use of the right hand, 10% loss of use of the left hand, 12.5% loss of use of the right arm, and 12.5% loss of use of the left arm.

In support of this conclusion the Arbitrator notes the following:

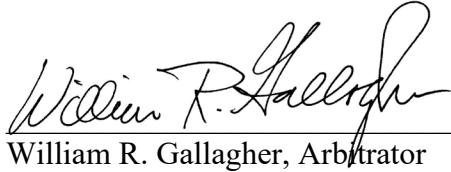
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner was able to return to work to his job with Respondent as a Correctional Lieutenant, and is still required to perform job duties which require the repetitive use of both upper extremities. The Arbitrator gives this factor moderate weight.

Petitioner was 39 years old at the time he sustained the injury. He will reach normal retirement age in approximately 27 years. Petitioner will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the accident, Petitioner sustained an injury to both upper extremities and was diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Surgeries were required on both of Petitioner's hands and elbows. In spite of the fact Petitioner had a good surgical result, he continues to experienced symptoms consistent with the injury he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC028820
Case Name	Tremayne Meadows v. Aerotek Staffing Agency
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0180
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Steven Getty

DATE FILED: 6/15/2026

/s/ Christopher Harris, Commissioner

Signature

a finger splint, prescriptions for Norco and Keflex, and referred to an orthopedic physician. Petitioner was also taken off work. (T.17-18; PX2; RX4). He testified that the pain, tingling and burning continued over the next few days. He also noticed his hand changing color and feeling cold. (T.18-19).

On December 21, 2016, Petitioner saw Dr. David Leu at Rockford Health for the orthopedic consultation. (T.19; PX3; RX4). The visit note stated that Petitioner presented “for evaluation of right dominant upper extremity pain after small laceration to right index finger and having a heavy object fall onto right upper extremity.” (PX3; RX4). Petitioner testified that the history of injury was wrong. (T.56-61). He reported pain and tenderness over the entire right upper extremity, and Dr. Leu noted that Petitioner had a small 0.5 cm laceration over the dorsum of the right index finger. Range of motion was full at the wrist, elbow and shoulder, and x-rays of the right finger, wrist, elbow, shoulder, forearm and humerus showed no fractures or bony abnormalities. Dr. Leu diagnosed Petitioner with right, anterior upper extremity pain and advised him to return in two weeks. (T.69-70; PX3; RX4).

In the meantime, Petitioner followed-up with his primary care providers at Crusader Community Health on December 29, 2016. The visit note documented that Petitioner had no known medical problems and took no medication on a regular basis. His work injury and small laceration to the right index finger were noted, and he was given a prescription for Norco. (T.19; T.72; PX4; RX4).

Petitioner returned to Rockford Health on January 10, 2017, and was seen by Dr. Marko Krpan, another orthopedic physician. Dr. Krpan noted that Petitioner’s small laceration had healed. “He sustained this injury at work when his hand struck a miniature dumpster while working with a pushing rod. He denies any previous injury to the hand. I reviewed Dr. Leu’s consultation.” (PX3; RX4). Dr. Krpan examined Petitioner and diagnosed him with blunt force contusion of the right index finger. He recommended occupational therapy for range of motion and strengthening, and noted that Petitioner was experiencing stiffness in the finger. Dr. Krpan changed Petitioner’s medication to Voltaren and kept him off work. (T.19; PX3; RX4).

Petitioner requested a refill of Norco on February 17, 2017 at Crusader Community Health. He reported trouble gripping things, muscle aches and pains up and down his arms and legs. Karen Maher, APN, provided Ibuprofen instead, and instructed Petitioner that narcotics were no longer indicated for the finger injury. (PX4; RX4). Petitioner testified: “[I]t wasn’t just a finger laceration, it was the pain.” (T.72-73; PX4; RX4). He continued to follow-up at Crusader Community Health for his right upper extremity complaints (pain, cold, numbness, stiffness, cramping, weakness, swelling, bruising, tingling) and other unrelated conditions. Various medical personnel managed his medication regimen (Norco, Ibuprofen, Naproxen, Gabapentin, and more) and advised him to follow-up with his orthopedic physician and physical therapist. (PX4; RX4).

Petitioner returned to Dr. Krpan on March 1, 2017, for “evaluation regarding the contusion and crush injury to his right hand and forearm. He states that he was recently incarcerated from February 1 through February 17 . . .” (PX3; RX4). Petitioner did not attend occupational therapy or receive the prescribed anti-inflammatories during this time, and his use of over-the-counter Motrin was sporadic. Dr. Krpan noted that Petitioner continued to have discomfort in his right

hand and fingers. He had full range of motion in his fingers but the movement was slow and with great discomfort. Petitioner also had hypersensitivity into the extremity and pain with range of motion of the wrist. Dr. Krpan recommended 800 mg of Motrin, occupational therapy and gave him work restrictions of left-handed sedentary duty. (PX3; RX4).

On April 4, 2017, Petitioner reported to Dr. Krpan that he was having significant difficulties in the right upper extremity with activity. He was also having numbness and tingling into the hand, pain over the radial styloid, and stiffness in the right upper extremity. Finkelstein test and Tinel's sign were positive, and Dr. Krpan could not perform a good Phalen's test because Petitioner was unable to fully flex his wrist. "There is no gross evidence of shiny skin or changes in the texture or color of the hand, but there is notable swelling of the right hand in comparison to the left, as well as the significant difficulty with motion both actively and passively." (PX3; RX4). Dr. Krpan diagnosed Petitioner with contusion and reflex sympathetic dystrophy (RSD)/complex regional pain syndrome (CRPS) of the right hand, carpal tunnel syndrome and radial styloid tenosynovitis. (T.22-23; PX3; RX4). He prescribed a Medrol Dosepak to decrease inflammation, occupational therapy and took Petitioner off work. (PX3; RX4).

Petitioner saw Dr. Krpan again on May 17, 2017. Examination revealed marked improvement in the gross appearance of his hand and the shiny appearance of the skin had diminished, "as well as the somewhat locked up position that he was carrying the hand in. He is able to actively fully extend all of the digits and can flex almost completely. He has good sensation throughout all of the digits. He is able to abduct and adduct all digits." (PX3; RX4). Petitioner's diagnoses on this date were contusion of the right hand with RSD. Dr. Krpan recommended continued occupational therapy and left-handed light duty. (PX3; RX4).

Petitioner underwent the prescribed therapy at Motivate from January 18, 2017 through May 18, 2017. (T.19; PX5). The May 18, 2017 visit note stated that Petitioner continued to have right wrist pain at an 8/10 level, but his pain and range of motion limitations at the 2nd digit incision site were gone. (PX5).

Petitioner followed-up with Dr. Krpan on August 17, 2017. The visit note documented that Petitioner was recently incarcerated and could not take his medication or perform physical therapy. (T.66; T.70-71; PX3; RX2; RX4). His pain level was a 9/10. Examination indicated that the swelling and shiny appearance of the skin had improved dramatically on the right hand. There was no evidence of hair quality or texture changes of the hand. Petitioner demonstrated difficulty with actively flexing and extending his fingers and wrist. He also had tenderness with palpation globally over the wrist as well as a positive Finkelstein's test. Dr. Krpan diagnosed Petitioner with right hand contusion, De Quervain's tenosynovitis and CRPS/RSD of the right hand. Dr. Krpan recommended more light duty, occupational therapy, prescribed Gabapentin and Voltaren, and gave Petitioner a thumb spica wrist splint to be used only when performing heavier activity. (PX3; RX4).

Respondent sent Petitioner for a Section 12 examination with Dr. Sam Biafora on September 11, 2017. His report is dated September 14, 2017. (T.24; T.47-48; T.83-85; RX6). The history stated that on December 17, 2016, Petitioner was at work pushing garbage into a chute using some type of rod. "As he pulled back on the rod, his right hand struck the corner of an oil

can. He describes the oil can as a large steel container that collects grease. He notes that his right index finger struck the corner of the steel container.” (RX6). Dr. Biafora also noted that Petitioner received treatment for a laceration to the right index finger, and that during treatment, he had been incarcerated for a few months. Petitioner additionally reported developing forearm and shoulder pain some time following the injury. At rest, he had pain in the right index finger, wrist, forearm and shoulder, his arm felt heavy, and his entire hand was constantly cold and numb. Petitioner denied any prior right upper extremity complaints. He was currently taking Gabapentin and Tylenol #3 for his right arm symptoms. (RX6).

Dr. Biafora reviewed Petitioner’s medical records from Drs. Leu and Krpan through August 17, 2017. He found the treatment to date reasonable, necessary and related to the work injury. Dr. Biafora also reviewed x-rays of the right shoulder (taken on December 21, 2016), as well as x-rays of the right forearm, right wrist and the right index finger (taken on September 11, 2017), none of which revealed any abnormalities. He examined Petitioner’s shoulders and elbows and described inconsistent findings with a high suspicion for symptom magnification. Dr. Biafora also documented positive cubital tunnel Tinel’s sign bilaterally, but negative carpal tunnel Tinel’s sign. He further found no dysesthesias, trophic changes or swelling throughout the right upper extremity, and stated that Petitioner had a normal sweat and hair pattern distribution. (RX6).

Dr. Biafora diagnosed Petitioner with a work-related right index finger contusion/laceration, now resolved, and opined that Petitioner’s diffuse right upper extremity complaints were of unknown etiology. He stated that Petitioner did not have any physical exam findings that would support a CRPS diagnosis, “nor would a mechanism of merely striking one’s finger on an object lead to complex regional pain syndrome.” (RX6). Dr. Biafora additionally opined that the work accident did not aggravate, accelerate or precipitate any pre-existing condition. He believed that no further treatment was indicated since Petitioner’s current condition was not work-related, and Petitioner could return to work without restrictions. (RX6).

On September 19, 2017, Dr. Paul Schroeder at Rockford Health noted that Dr. Krpan had advised Petitioner to see a pain specialist. Dr. Schroeder noted Petitioner’s December 2016 work injury and some of his treatment to date. He examined Petitioner, prescribed pain medication, ordered an MRI and referred Petitioner to a pain clinic. (PX3; RX4).

Petitioner completed an MRI of the right forearm on September 27, 2017, and Dr. Krpan reviewed the results on October 3, 2017. He noted no gross evidence of changes. (T.26; PX2; PX3; RX4). Dr. Krpan also reviewed Dr. Biafora’s Section 12 report and disagreed “that the blunt force contusion of the right hand could not cause the type of neuropathic pain syndrome that Mr. Meadows is experiencing.” (PX3; RX4). Dr. Krpan documented that Petitioner demonstrated difficulty with simple activities with the right hand, but range of motion and strength had improved. “The swelling has diminished as well as the shiny appearance to his skin which was previously present.” (PX3; RX4). Dr. Krpan’s diagnosis for Petitioner was CRPS secondary to blunt force trauma of the right hand, and he stated, “that his personality is such that he would be more likely to develop a complex regional pain syndrome than somebody who had a less excitable personality.” (PX3; RX4). He increased Petitioner’s Neurontin prescription, recommended physical therapy to improve range of motion and strength, maintained the left-handed only work

restriction, and ordered an EMG to further evaluate the nerve function in the arm. (T.26; PX3; RX4).

Petitioner attended therapy at Rockford Health/Rockford Memorial Hospital. The October 25, 2017 record documented that Petitioner's present condition started in December 2016 when he "smacked his hand against a container and got worse last January 2017 with no apparent reason." (PX3; RX4). The therapist also noted Petitioner's treatment to date, work restrictions and that currently, his right hand was very sensitive to touch/pressure. Petitioner further reported numbness, tingling and weakness. (PX3; RX4). His complaints continued through the last therapy record dated November 13, 2017. (PX2).

On November 7, 2017, Petitioner had consulted with Dr. Evelyn Oteng-Bediako, a pain specialist at Rockford Memorial Hospital, who noted Petitioner's report of right upper extremity pain after smacking an oil container at work in December 2016. (T.27; PX2; RX4). The visit note further stated that Petitioner was positive for weakness in the right arm and allodynia with palpation. He was wearing a right wrist splint and unable to fully extend his right elbow and fingers. Petitioner also could not appose thumb to fingers without pain and he had a weak right-hand grip due to pain. Dr. Oteng-Bediako documented that Petitioner's skin was warm and dry, and she noted no abnormality on the MRI of the right forearm dated September 27, 2017. She assessed Petitioner with intractable neuropathic pain of the upper extremity and CRPS Type 1 of the right upper extremity. Dr. Oteng-Bediako did not recommend long-term opioid use and Petitioner declined sympathetic (stellate) blocks. Neurontin was prescribed instead. (PX2; RX4).

Petitioner visited the emergency department at Rockford Memorial Hospital on November 8, 2017. He reported right upper extremity pain that began in December. "He relates hitting a vegetable oil storage tank at his place of employment at the time with resulting laceration to the right finger index PIP joint along with the right hand itself." (PX2; RX4). The record also indicated that the laceration had healed but that Petitioner was left with persistent pain in his hand, wrist and forearm with numbness and tingling into the hand and fingers. The ED physician noted no skin changes in the upper extremities, hair loss, skin discoloration or texture changes. Petitioner reported unbearable pain and that Neurontin did not relieve his symptoms. "I discussed with him that we do not do chronic pain management out of the emergency department and that I would not be able to prescribe any opioids for him . . ." (PX2; RX4). Petitioner was encouraged to research CRPS. (PX2; RX4).

On November 16, 2017, Dr. Krpan noted Petitioner's persistent complaints related to his right-hand contusion and CRPS. His examination findings included "evidence of weakness versus poor effort" and "notable swelling about the right hand and upper extremity, especially along the extensor retinaculum of the right wrist." (PX6; RX4). Dr. Krpan noted that occupational therapy aggravated Petitioner's symptoms and advised him to consult with psychiatry regarding coping skills and pain management. He kept Petitioner off work. (PX6; RX3; RX4). Petitioner received more therapy for his right hand at Rockford Health from November 20, 2017 through January 3, 2018. (RX4).

Petitioner had returned to Dr. Oteng-Bediako on December 5, 2017 for right wrist, hand and whole arm pain. He reported that physical therapy, medication and massage helped ease the

pain but his right fingers were constantly burning. Dr. Oteng-Bediako examined Petitioner and diagnosed him with intractable neuropathic pain and CRPS Type 1 of the right upper extremity. She again recommended a series of sympathetic (stellate) blocks. (RX4).

On December 28, 2017, Dr. Krpan noted that Petitioner was involved in a rear-end collision on December 13, 2017 where he was the restrained passenger. Petitioner reported neck issues and denied specific complaints with respect to his right hand. Physical examination demonstrated that the right hand was doing “exceptionally well.” The skin color and tone were improved dramatically. There was no shiny appearance and Petitioner had regained full flexion and extension of all his digits. There was no instability of the digits either and Petitioner was more tolerant to grasping and circumduction of the wrist. Dr. Krpan advised Petitioner to continue with his home exercises and anti-inflammatory use. (PX6; RX4).

Petitioner also reported the motor vehicle accident to his treaters at Crusader Community Health. (T.27-28; PX4; RX4). The January 9, 2018 visit note stated that all imaging was unremarkable, but that Petitioner continued to have neck and back pain. He was requesting an MRI and a refill of Norco. Dr. Hina Durani wanted to taper Petitioner off Norco and wrote that it was not the medication of choice for CRPS “and he will benefit from NSAIDs/antidepressant/anticonvulsants but he is adamant about getting Norco and states that no other medication works besides Norco . . .” (PX4; RX4).

Petitioner saw Dr. Krpan on February 8, 2018, and they reviewed the results of the EMG/NCV study of the right upper extremity that he had completed on February 6, 2018. The study revealed no evidence of neurologic dysfunction. (T.77; PX6; RX4). Dr. Krpan stated that while Petitioner still had some weakness and hesitancy with motion of the hand, his hand appeared normal. Dr. Krpan determined that Petitioner had reached maximum medical improvement (MMI) with respect to the right hand and recommended a functional capacity evaluation (FCE). (PX6; RX4). Dr. Krpan allowed Petitioner to remain on light duty with left-hand work only and no lifting more than 15 pounds until his (unrelated) back issues were resolved. (T.29; PX6; RX4). Petitioner testified that he did not undergo the FCE or return to work for Respondent, and indicated that they could not accommodate his restrictions. (T.29-30).

Petitioner underwent another EMG study of the right upper extremity on February 22, 2018 at OSF Center for Health. The results were normal with no electrodiagnostic evidence for a focal entrapment neuropathy, cervical radiculopathy, cervical plexopathy, generalized polyneuropathy or myopathy. (RX5).

On March 21, 2018, Petitioner established medical pain management at Crusader Community Health. The work accident and motor vehicle accident were documented with Petitioner reporting that he had “smacked an oil can.” Tamara Wojciechowski, CRNA, indicated that exam of the right upper extremity was normal. There was no discoloration or vascular changes when compared bilaterally. “Patient reports undergoing a quantity of 2 EMGs in 2018, the EMG available is completely normal.” (PX4; RX4). Urine toxicology baseline was negative for illicit and controlled substances of any type. The impression as of March 21, 2018 was that Petitioner did not have CRPS of the right upper extremity. His medication was adjusted to stop Gabapentin, Cyclobenzaprine and Naproxen, and to start Lyrica. (PX4; RX4).

On June 2, 2018, Petitioner followed-up with Karen Maher, FNP, at Crusader Community Health. He reported that his “arm started hurting out of the blue” and that “it hurts like it did when it first started.” (PX4). The visit note also stated: “Reports he has CRPS, MPM (medical pain management) does not agree.” (PX4). Ms. Maher recommended Gabapentin, physical therapy and advised Petitioner to make an appointment with neurology. (PX4).

Petitioner commenced therapy for his right upper extremity on June 19, 2018 at OSF Center for Health. The visit note documented Petitioner’s December 17, 2016 work accident – “pushed trash into bin with rod and had hit his right hand on a cart behind him and cut his finger. He reports the next morning he had RUE stiffness and at work he felt his RUE ‘freeze up’ with pain.” (RX3; RX4; RX5). The visit note additionally stated: “He was incarcerated x 2 months where he was diagnosed with CRPS for the first time by the MD there. Later . . . confirmed with CRPS by Dr. Leu and Dr. [Krpan].” (RX3; RX4; RX5). Petitioner’s current complaints were constant pain, tingling and throbbing to his hand, intermittent sharp pain to his right shoulder and intermittent forearm pain. He also reported that his fingertips and hand would turn purple off and on and blotch. Petitioner was taking Gabapentin for pain. The therapist noted no discoloration, warmth to touch, blotching or swelling in the right upper extremity, but throughout the assessment, Petitioner was guarding his right upper extremity. He also demonstrated tenderness, as well as decreased range of motion and function of the right upper extremity. The therapist believed Petitioner was a good candidate for physical therapy with an emphasis on pain relief in order to work toward improving function. (RX3; RX4; RX5).

Petitioner returned to Dr. Krpan on July 25, 2018 for right hand pain especially with activity. Examination revealed near full range of motion with some difficulty with the extremes of flexion of the digits. Petitioner could make a fist and had improved strength since February. He was also able to abduct and adduct the digits. “There is still some generalized swelling about the hand in comparison to his left hand, but the shiny appearance to the skin has resolved and the normal wrinkles of the hand have returned.” (PX6). Dr. Krpan’s impression was contusion of the right hand with CRPS. He stated: “We again discussed that his anxiety disorder, as well as the injury to the hand and the CRPS which has presented do amplify his symptoms . . .” Dr. Krpan reiterated that Petitioner was at MMI and recommended an FCE and another follow-up. “We discussed that he will most likely have some permanent limitations and restrictions regarding work.” (PX6).

On September 4, 2018, Petitioner reported to his physical therapist that he was feeling more stress lately regarding his “busy life and onset of college classes.” (RX3; RX4; RX5). He also reported having more pain than usual to his right upper extremity. “He reports he is still exercising at the fitness center and uses the treadmill and alternates sessions between upper body and lower body when using weights. He reports he uses 8 lbs with good tolerance to each UE but that he cannot use 10 lbs due to increased RUE pain.” (RX3; RX4; RX5). Petitioner was further observed texting and making a phone call during therapy “and was noted to be using each thumb equally for this task.” (RX3; RX4; RX5). He was discharged from therapy on this date – “progress made overall, the fact he has not been following through with the full home program, he is independently exercising in the gym and continues to progress himself and trial various activities toward building tolerance to his RUE.” (RX3; RX4; RX5).

Petitioner returned to therapy at OSF on November 7, 2018 and reported that his right hand/forearm pain was due to the blunt force trauma to the right finger two years ago while at work. "Patient reports the laceration on finger became infected. He gradually began to have pain radiating from right hand into the forearm and eventually the shoulder. He reports no shoulder pain today." (RX3; RX4; RX5). The visit note also documented that Petitioner told the therapist that he was injured on an oil can, he further told her to "tone it down, I don't like your attitude," he was texting with both thumbs during the appointment, and he reportedly stated that he was "working on a settlement, people with CRPS can get more money," but also said "don't write that down." (RX3; RX4; RX5). At arbitration, Petitioner denied stating this. (T.81-83). The therapist noted that Petitioner was recently in therapy for the same issue, was given a good exercise program, OT also gave him exercises, but Petitioner reported being too busy to perform his home exercise program. The therapist recommended progressing Petitioner with his home exercise program and if he was non-compliant, he would be discharged from therapy. (RX3; RX4; RX5).

Petitioner's discharge from therapy was confirmed on November 9, 2018. The visit note from OSF stated that Petitioner reported no change in pain since the evaluation a few days prior, but he was texting with two hands throughout the session. He was also observed leaning/weightbearing into the affected right hand several times. The therapist stated that Petitioner had received therapeutic intervention at multiple rehabilitation clinics since that time, and was discharged from therapy on September 4, 2018 with a home exercise program. "Review of all history and current medical presentation leads this therapist to conclude that further treatment at this time is not likely to yield further benefit . . ." (RX3; RX4; RX5).

Petitioner continued to seek treatment for his right upper extremity and (unrelated) low back complaints through 2019. His subsequent visits to Crusader Community Health through November 18, 2019 involved more changes to his medication and recommendations for continued physical and occupational therapy. There was an April 22, 2019 visit note from Crusader that documented Petitioner's increased pain in his right elbow and forearm. "States that this pain is new and different from previous pain. Was instructed by his lawyer to get imaging and a check up for this pain." (PX4; RX4). The visit note also indicated that Petitioner was moving his right arm at ease with no signs of discomfort or limitations in range of motion. "Buttoned up his shirt with his right hand with no obvious discomfort. Did not display any outward signs of discomfort until the physical exam portion of the exam." (PX4; RX4). Petitioner was assessed with right elbow tendonitis. (PX4; RX4). Respondent's Exhibit 3 had the x-ray report of the right elbow, dated April 26, 2019, which stated no fracture or dislocation was detected. (RX3; RX4).

Petitioner switched to a new primary care provider's office on December 17, 2019. The visit notes documented Petitioner's treatment related to bilateral low back pain and CRPS of the right upper extremity "due to prior work related injury from banging hand on oil container . . ." (PX7). On June 8, 2020, Petitioner reported to Dr. Lucio Martinez, of FHN Family Healthcare Center, that he had sweating of the right arm with changes in temperature regulation "indicative of complex regional pain syndrome." (PX7). The visit note not only documented Petitioner's December 2016 work injury, but also noted the December 2017 motor vehicle accident and that in February 2019, he fell on ice at Rock Valley College and aggravated his chronic lower back pain. Respondent's Exhibit 4 had a medical visit note, dated February 16, 2019, that described

Petitioner's injuries after his fall. His complaints were specific to the neck and upper back and he was diagnosed with a neck strain and acute, right-sided thoracic back pain. X-rays indicated no acute osseous findings in the cervical and thoracic spine. Petitioner was prescribed a muscle relaxant. (T.31-32; PX7; RX4).

Petitioner followed-up with Dr. Martinez on September 25, 2020. He examined Petitioner in relation to CRPS, chronic bilateral low back pain, degenerative disc disease and essential hypertension. As to the CRPS, Dr. Martinez's examination of Petitioner's wrist, hand and fingers revealed cooler fingers due to reflex sympathetic dystrophy on the right. He added: "The CRPS is related to a prior work related right hand injury after he banged his hand on an oil container at work. We are also treating that with the gabapentin, duloxetine, and amitriptyline." (PX7). Dr. Martinez also stated that Petitioner qualified for medical cannabis to treat his underlying anxiety, chronic pain, glaucoma and RSD/CRPS. Petitioner was further referred to physical therapy and pain management. (PX7).

As of January 15, 2021, the primary care provider notes stated that Petitioner was receiving chiropractic treatment for chronic bilateral low back pain without sciatica and using a TENS unit for his back and right forearm. (T.33; PX7; PX8). The visit note also indicated difficulty in connecting Petitioner with a regular pain specialist. Dr. Martinez stated that he was not comfortable with prescribing any further controlled substances "since he tested positive for amphetamines and cocaine during the previous urine drug screen." (PX7).

Petitioner attended physical therapy at FHN Memorial Hospital from March 12, 2021 through October 8, 2021. The visits were primarily for his unrelated back condition but Petitioner also received some treatment to his right upper extremity. (PX8).

On March 30, 2021, Petitioner had a neurology office visit with Dr. Seema Kumar, also at FHN Family Healthcare Center. (T.34; PX8). The visit documented that Petitioner had been having right arm pain and paresthesia since 2016 due to a work injury. Dr. Kumar noted that a prior EMG and cervical spine MRI were negative for any abnormality. (PX8; RX3). She also noted that Petitioner was not interested in taking medication because none of the medication had helped in the past. Dr. Kumar recommended a repeat EMG. "I do not have much to offer other than the medication to this patient if he is willing to take. I would see him as needed basis at this point." (PX8).

Dr. Martinez documented on April 23, 2021 that Petitioner was having modest success with physical therapy but that the therapist noted some looseness of the right forearm with less muscle tightness. Petitioner was also encouraged to continue taking Gabapentin "as it is the best treatment for his complex regional pain syndrome type 1 of the right arm." (PX7). By 2023, Petitioner's CRPS remained stable with medication management through FHN Family Healthcare Center although he still had intermittent exacerbations of his pain with certain arm movements. (PX8).

Petitioner's Exhibit 9 are additional physical therapy records from OrthoIllinois. Dr. Martinez had referred Petitioner to this provider and he attended therapy from August 10, 2023 through October 13, 2023. The history noted Petitioner's CRPS of the right upper extremity and

stated that the onset was one year prior and due to an unknown injury. Petitioner reported “pain is always from fingers to elbow but can increase all the way to neck and shoulder. Fingers are often tingling but not numb, aching and throbbing pain.” (PX9). He also received treatment to the cervical spine and sometimes to his lumbar spine. (PX9).

The last treatment record that Petitioner offered into evidence pertained to his December 16, 2024 visit with Dr. Callina Elgar, DO, at FHN Family Healthcare Center. Dr. Elgar addressed Petitioner’s CRPS-related right arm pain and other unrelated conditions. She refilled his medication and noted that he was stable on them. She also provided a prescription for a TENS unit to help with Petitioner’s CRPS. Dr. Elgar also documented Petitioner’s 7-8 year history with CRPS and that he had not treated with neurology or rheumatology, “but was told at initial dx that movement helps and to continue with anti-inflammatories, neuropathic medications, and muscle relaxants. [H]e has been through rehab and TENS unit was recommended.” (PX10). Petitioner testified that his symptoms had not changed much since the work accident. (T.31).

Respondent’s Exhibit 4 contained Petitioner’s medical records prior to December 17, 2016. There was an August 11, 2015 visit note related to right forearm pain. Examination findings on that day included decreased range of motion and tenderness, and positive Tinel’s and Phalen signs of the right wrist. Petitioner was neurovascularly intact. He denied any injury. Petitioner was diagnosed with carpal tunnel syndrome of the right wrist and provided with a Velcro wrist splint and Ibuprofen. There were no prior records related to CRPS. (T.61-66; T.85; RX4).

At arbitration, Petitioner testified that when he could, he would work as a videographer to earn money. He worked for himself, as a subcontractor. (T.35; T.37-39; T.42-43). Petitioner was able to perform the work but had to pace himself. “You know, one thing I learned is that you got to keep moving. You can’t stay still. That’s why I keep fidgeting right now, because that’s the only way it will soothe it.” (T.35-36; T.86-87). Writing also aggravated the symptoms in his hand, and he had difficulty typing, picking up or holding a camera, using the phone and with gripping. (T.39-41). Petitioner further testified that he had worked as an intern at WREX doing audio and directing work, but he no longer had the job because he needed extra breaks to relieve his pain. (T.40-42; T.54-55). During cross-examination, Petitioner testified that he tried to go into the lawn care business with his cousin but it did not work out because he could not push the lawnmower. (T.55).

Petitioner testified that his current symptoms included coldness, tingling and throbbing in the right arm. “Mostly in my hands from I say half the forearm to the hand (indicating).” (T.36-37). Petitioner pointed out the different colors. “It turn purple, turn blue, turn orange.” (T.37). He testified that his symptoms were constant. Petitioner also paid out-of-pocket for massage therapy. (T.37-38).

Petitioner is right-handed. He denied having any of the symptoms in his right hand before the December 2016 injury. (T.43; T.46). Petitioner also denied receiving treatment for complaints in his right hand or right wrist before his medical visit on December 18, 2016, and he did not have any problems performing his job duties using his right hand. Petitioner had no restrictions prior to the work accident. (T.61; T.85-86).

Petitioner also acknowledged attending college classes at Rock Valley in and around 2018. (T.78-79). He testified that he earned a welding certificate. “[T]hey told me I could do it. But I did it with my left hand trying to continue that work, and then they told me, you know, that I had to be careful.” (T.79-81).

CONCLUSIONS OF LAW

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

The Arbitrator did not find Petitioner credible, and denied his claim for failure of proving a definite cause of injury based on the varying descriptions of Petitioner’s accident found in the arbitration record. The descriptions used words such as: “smacked/knocked over the can/oil can,” “blunt force injury,” “laceration to my arm,” “cut his finger on an oil can/at work,” “small laceration to the right index finger,” “hand struck a miniature dumpster,” “blunt force contusion of the right index finger,” “contusion and crush injury to the right hand and forearm,” “right hand struck the corner of an oil can,” “blunt force trauma,” “smacked his hand against a container/oil container,” “hitting a vegetable oil storage tank,” “hit his right hand on cart behind him and cut his finger,” and “banging hand on oil container.” The Commission has reviewed the record in its entirety, and finds that although the descriptions were not identical, they sufficiently evidenced that a specific injury or incident occurred at Respondent’s facility on December 17, 2016. The descriptions were also consistent overall with Petitioner’s testimony regarding his mechanism of injury on that date. Petitioner further explained any discrepancy in the record, and especially denied the history in Dr. Leu’s December 21, 2016 visit note of a heavy object falling onto his right upper extremity.

The Commission additionally finds no testimony or evidence contradicting Petitioner’s testimony that on December 17, 2016, he was at work for Respondent, cleaning up and dumping chips down a chute. Petitioner testified and the evidence indicated that he had been using a long rod to push chips or garbage down the chute, and when he pulled his right arm back out, he struck a container/oil can/garbage can hard enough to sustain, at the very least, a laceration to his right index finger. Respondent’s staff helped bandage Petitioner’s wound that day, and when he attempted to work the next day, Respondent sent him to the emergency department. The ED record stated that Petitioner cut his finger on an oil can at work, and treated him for a superficial laceration in the right 2nd finger.

Based on the preponderance of the evidence, the Commission finds that Petitioner proved that he sustained an accident that arose out of and in the course of his employment as a laborer for Respondent on December 17, 2016. The Arbitrator’s decision is therefore reversed.

The Commission further finds that Petitioner’s right index finger laceration is causally related to the work accident. The evidence demonstrated that this injury was immediate, obvious and required emergency treatment. On September 14, 2017, Respondent’s Section 12 examiner, Dr. Biafora, diagnosed Petitioner with a work-related right index finger contusion/laceration, now resolved. Petitioner’s medical records corroborated Dr. Biafora’s opinion and documented that the laceration had healed by January 10, 2017.

Petitioner additionally alleges that he developed CRPS as a result of the work accident and that he continues to suffer from this condition. Prior to December 17, 2016, Petitioner had sought emergency treatment for right forearm pain on August 11, 2015. He was diagnosed with carpal tunnel syndrome of the right wrist and provided with a Velcro wrist splint and Ibuprofen. There was no evidence of any follow-up medical visits or treatment related to this condition, and there was no evidence whatsoever related to CRPS prior to December 17, 2016. Petitioner also testified that he was working for Respondent without symptoms in the right hand or restrictions at the time of his December 17, 2016 injury. He confirmed that he did not have any problems performing his job duties using his right hand.

Petitioner sought treatment at Rockford Memorial Hospital on December 18, 2016. The ED record not only documented the treatment Petitioner received for the finger laceration, but also noted his complaints of right forearm and upper arm pain, as well as burning and tingling. Petitioner saw Dr. Leu on December 21, 2016 who indicated that range of motion was full at the wrist, elbow and shoulder, but that Petitioner had pain and tenderness over the entire right upper extremity. Dr. Leu diagnosed Petitioner with right, anterior upper extremity pain.

Petitioner continued to follow-up with Crusader Community Health for his finger laceration and pain, but specifically mentioned having trouble gripping things and pain up and down his arms on February 17, 2017. According to Dr. Krpan's notes, he had been incarcerated from February 1-17, 2017. On March 1, 2017, Dr. Krpan noted that other than occasional Motrin, Petitioner had not received any other treatment while incarcerated. And similar to Dr. Leu's previous findings, Dr. Krpan noted that Petitioner had full range of motion in his fingers but the movement was slow and with great discomfort. Petitioner also had hypersensitivity into the extremity and pain with range of motion of the wrist. Dr. Krpan diagnosed Petitioner with CRPS of the right hand on April 4, 2017. The visit note stated that while Petitioner had no gross evidence of shiny skin or changes in the texture or color of the hand, there was notable swelling of the right hand. He also had significant difficulty with motion both actively and passively.

On May 17, 2017, Dr. Krpan stated that Petitioner had marked improvement in the gross appearance of his hand and the shiny appearance of the skin had diminished. He also noted that Petitioner was able to actively fully extend all of the digits and flex almost completely, he had good sensation throughout all of the digits, and was able to abduct and adduct all digits. Petitioner's diagnoses on this date were contusion of the right hand with RSD, and his treatment comprised of prescription medication and therapy.

Petitioner was again incarcerated some time after May 2017, with Dr. Krpan noting on August 17, 2017 that Petitioner could not take his medication or perform physical therapy while incarcerated. Examination indicated that the swelling and shiny appearance of the skin had improved dramatically on the right hand. There was no evidence of hair quality or texture changes of the hand. However, Petitioner still reported a 9/10 pain level and had difficulty actively flexing and extending his fingers and wrist. He also had tenderness with palpation globally over the wrist as well as a positive Finkelstein's test. Dr. Krpan diagnosed Petitioner with right hand contusion, De Quervain's tenosynovitis and CRPS/RSD of the right hand. Petitioner's medical records after this date continued to document symptoms, complaints and treatment to the right hand and arm.

The Commission notes Respondent's argument that Petitioner was allegedly diagnosed with CRPS while he was incarcerated in 2017. However, the medical records demonstrated that Petitioner was already experiencing symptoms in his right upper extremity prior to either incarceration period. There was also no evidence that he sustained any subsequent injury in prison that could have or would have contributed to CRPS.

Respondent additionally relied on the opinions of its Section 12 examiner, Dr. Biafora, to dispute causation for Petitioner's CRPS condition. Dr. Biafora stated in his September 14, 2017 report that Petitioner did not have any physical exam findings to support a CRPS diagnosis, and that the mechanism of striking his finger on an object would not lead to CRPS. Dr. Biafora opined that Petitioner's diffuse right upper extremity complaints were of unknown etiology. Dr. Krpan disagreed with Dr. Biafora, and noted on October 3, 2017 that Petitioner had demonstrated difficulty with simple activities with the right hand, and he also had previous issues with range of motion, strength, swelling, and the shiny appearance of his skin. Dr. Krpan opined that a blunt force contusion of the right hand could cause the type of neuropathic pain syndrome that Petitioner was experiencing. He continued to diagnose Petitioner with CRPS secondary to blunt force trauma of the right hand.

The Commission finds Dr. Krpan's opinion thorough, persuasive, and further corroborated by the medical evidence. The treatment records demonstrated that Petitioner's CRPS was not a pre-existing condition, and from the onset of the December 17, 2016 work accident, Petitioner consistently reported, and every provider noted, the work accident together with symptoms and complaints related to his right upper extremity. The Commission finds that Petitioner's injury was not limited to a finger laceration. Furthermore, although EMG/NCV testing and imaging did not reveal abnormal findings, Dr. Krpan, and later Dr. Oteng-Bediako, found sufficient basis in their examinations to warrant a CRPS diagnosis. Unlike Dr. Biafora, Dr. Krpan specified the physical exam findings to support his diagnosis and he correctly noted that the mechanism of injury involved Petitioner's hand and not just his finger. Dr. Krpan also considered Petitioner's mental state as well as other conditions of the hand, and still diagnosed him with work-related CRPS. Dr. Krpan eventually determined that Petitioner reached MMI for the right hand on February 8, 2018. He noted that Petitioner still had some weakness and hesitancy with motion of the hand but his hand appeared normal.

Petitioner subsequently saw Tamara Wojciechowski, CRNA, on March 21, 2018 for a pain management appointment at Crusader Community Health. Her impression was that Petitioner did not have CRPS of the right upper extremity based on a normal exam and EMG study. Ms. Wojciechowski's opinion was noted in follow-up visits at Crusader Community Health, but Petitioner's treaters continued to recommend Gabapentin and physical therapy – the same treatment Petitioner had been receiving for CRPS. Dr. Krpan also reiterated in his July 25, 2018 visit note that his impression of Petitioner was contusion of the right hand with CRPS. On this date, Petitioner reported right hand pain especially with activity. Examination revealed improvement in some areas and difficulty in others since February. Dr. Krpan also noted some generalized swelling in the right hand, but that the shiny appearance to the skin had resolved and the normal wrinkles of the hand had returned. He further stated that Petitioner's anxiety disorder, hand injury and CRPS amplified his symptoms. Dr. Krpan still believed Petitioner was at MMI.

Petitioner continued to treat on and off for his CRPS condition through medication management with Crusader Community Health and FHN Family Healthcare. On September 25, 2020, Dr. Martinez documented that Petitioner's wrist, hand and fingers revealed cooler fingers due to reflex sympathetic dystrophy on the right. He added: "The CRPS is related to a prior work related right hand injury after he banged his hand on an oil container at work. We are also treating that with the gabapentin, duloxetine, and amitriptyline." (PX7). The last treatment record, dated December 16, 2024, noted Petitioner's 7-8 year history with CRPS and Dr. Elgar, at FHN Family Healthcare Center, refilled Petitioner's medication noting he was stable on them. She also provided a prescription for a TENS unit to help with Petitioner's CRPS.

In light of the foregoing, the Commission finds by a preponderance of the evidence that Petitioner's current condition of ill-being related to CRPS is also causally connected to the December 17, 2016 work accident. The Commission's finding is based on the chain of events, the consistent reference to the work accident in relation to Petitioner's right upper extremity complaints and CRPS, Dr. Krpan's timely and persuasive opinions in the record, the medical records stating that CRPS could wax and wane, and the multiple providers not only acknowledging Petitioner's CRPS, but continuing to recommend (through 2024) the same treatment – primarily conservative treatment such as Gabapentin. According to Dr. Martinez, "it is the best treatment for his complex regional pain syndrome type 1 of the right arm." (PX7).

With the Commission's finding of accident and causal connection in favor of Petitioner, the Commission awards Petitioner the following workers' compensation benefits:

Petitioner claimed that he was entitled to TTD benefits from December 18, 2016 through February 8, 2018, as his treating physicians either took him off work during this period or allowed him to work with restrictions. The evidence demonstrated that Respondent paid some TTD benefits in lieu of accommodating Petitioner's restrictions, and Petitioner stipulated that Respondent was owed a credit of \$9,069.42 for TTD benefits previously paid. (AX1; RX1). The evidence further demonstrated that Petitioner reached MMI with respect to his right hand on February 8, 2018. The Commission therefore finds that Petitioner proved his entitlement to TTD from December 18, 2016 through February 8, 2018. The Commission also awards Respondent a credit of \$9,069.42.

Finally, as to PPD benefits, the Commission has considered and weighed the five factors under Section 8.1b(b) of the Act as follows:

- (i) Impairment Rating: The parties did not offer any impairment rating into evidence. The Commission gives this factor no weight.
- (ii) Occupation of Injured Employee: At the time of the work accident, Petitioner worked for Respondent as a general laborer. He reached MMI on February 8, 2018 and as of July 25, 2018, Dr. Krpan was still recommending an FCE in order to determine whether Petitioner had some permanent limitations and restrictions regarding work. Petitioner testified that he never underwent the evaluation, but instead returned to various other jobs as a self-employed videographer, an intern at WREX, and unsuccessfully

attempted to work in the lawn care business. The Commission gives this factor some weight.

- (iii) Petitioner's Age: Petitioner was 27 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of Petitioner's age on any permanent disability resulting from the December 17, 2016 work accident. Nonetheless, the Commission finds that Petitioner must still live with this disability and gives moderate weight to this factor.
- (iv) Petitioner's Future Earning Capacity: Petitioner provided no evidence regarding this factor. The Commission therefore gives this factor no weight.
- (v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. Following the December 17, 2016 work accident, Petitioner sustained a right index finger laceration with resulting CRPS-related findings and complaints in his right hand and throughout his right upper extremity. The finger laceration healed and resolved less than a month after the December 17, 2016 work accident with no evidence of permanent partial disability. With regard to CRPS, Petitioner's primary treatment comprised of prescription medication and therapy. Petitioner testified that he remained symptomatic in his dominant right hand and upper extremity which made heavy lifting, writing, typing or gripping difficult. He stated that constant movement helped soothe his condition and he continued to take medication. The Commission gives this factor significant weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to 7.5% loss of use of the right hand pursuant to Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on July 22, 2025 is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of \$354.67 per week for 59 5/7 weeks, from December 18, 2016 through February 8, 2018, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of \$9,069.42 for TTD benefits previously paid as stipulated by Petitioner on the Request for Hearing form.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of \$319.20 per week for 15.375 weeks because the injuries sustained caused seven-and-a-half percent (7.5%) loss of use of the right hand pursuant to Section 8(e) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all other 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 \$17,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

June 15, 2026

CAH/pm

5/21/26

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	23WC013238
Case Name	David Brimmer v. Advantage Moving & Storage
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0181
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Christopher Jarchow

DATE FILED: 6/15/2026

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID BRIMMER,

Petitioner,

vs.

NO: 23 WC 013238

ADVANTAGE MOVING & STORAGE,

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 credit for overpayment of TTD benefits, and Petitioner's post-arbitration request for penalties alleging non-payment of undisputed benefits, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Regarding Petitioner's request for penalties based on Respondent's alleged failure to pay the undisputed portion of the arbitration award pending this review, the Commission finds it does not have jurisdiction to adjudicate this issue at this time because the issue involves post-arbitration conduct which is not part of the evidentiary record on review, and Petitioner did not file a formal petition for penalties with a request for hearing. Accordingly, the Commission concludes it has no jurisdiction at this juncture to consider the request for penalties.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 3, 2025 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for penalties is denied.

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 \$62,200.00. 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.

June 15, 2026

KAD/swj
O51926
42

s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013238
Case Name	David Brimmer v. Advantage Moving & Storage
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Christopher Jarchow

DATE FILED: 9/3/2025

/s/ Crystal Caison, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 3, 2025 3.88%

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**

David Brimmer

Employee/Petitioner

v.

Advantage Moving & Storage

Employer/Respondent

Case # **23** WC **013238**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **6/4/2025**. 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 **04/28/2023**, 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 **\$95,576.00**; the average weekly wage was **\$1,838.00**.

On the date of accident, Petitioner was **50** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$86,998.60** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$86,998.60**.

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

ORDER

The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of use of a right leg pursuant to Section 8(e) of the Act, which corresponds to 64.5 weeks at weekly rate of \$998.02.

The parties stipulated that Petitioner is entitled to 68-6/7 weeks of temporary total disability benefits (TTD) at \$1,225.34 per week and that the Respondent shall pay the sum of **\$350.74** directly to Petitioner for reimbursement of reasonable and necessary out of pocket medical expenses as provided by Section 8(a) and 8.2 of the Act.

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

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

Crystal L. Caison

Signature of Arbitrator

SEPTEMBER 3, 2025

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

David Brimmer	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC013238
Advantage Moving & Storage	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on June 4, 2025 before Arbitrator Crystal L. Caison. The sole issue in dispute is nature and extent. (AX 1). The parties stipulated that Petitioner is entitled to 68-6/7 weeks of temporary total disability benefits (TTD) at \$1,225.34 per week and that the Respondent shall pay the sum of **\$350.74** directly to Petitioner for reimbursement of reasonable and necessary out of pocket medical expenses as provided by Section 8(a) and 8.2 of the Act. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

On April 28, 2023, Petitioner was a fifty-year-old carpenter working for Respondent. (Tr. P. 17). Petitioner testified he has worked as a carpenter for thirty years and has worked for Respondent for ten years. (Tr. P. 17). Petitioner testified his job duties for Respondent include unloading trucks and installing various office furniture and hotel furniture, including desks, shelving, cabinets, bathroom vanities, and wardrobes. (Tr. P. 18-20). Petitioner testified that his job requires use of various tools such as hammers, drills, and circular saws. (Tr. P. 21). As part of his job duties, Petitioner carries materials that weigh between 50 pounds to 150 pounds. (Tr. P. 21).

Petitioner testified that prior to April 28, 2023, he did not have any issues or problems with his right knee, he had not received any medical treatment to his right knee, nor had he ever been prescribed any MRIs for his right knee. (Tr. P. 22-23).

On April 28, 2023, Petitioner was decommissioning a warehouse in Elk Grove Village, taking down a heavy-duty shelving system to move it to another location. (Tr. P. 23-24). On that particular day, Petitioner was on top of a platform approximately five feet in the air, using a circular saw. When he attempted to descend from the platform, his foot got stuck and he twisted his right knee. (Tr. P. 24-27). He heard a loud pop and fell to the ground. (Tr. P. 27). Petitioner testified he felt immediate excruciating pain and needed to be helped up from the ground. (Tr. P. 27).

Petitioner then drove himself to the hospital from the job site (Tr. 27). The Emergency Department conducted an evaluation and took x-rays of Petitioner. *Id.* The hospital then gave Petitioner crutches and a knee immobilizer (Tr. 28).

Petitioner testified he continues to have weather sensitivity of the right knee, resulting in stiffness and soreness in his right knee. (Tr. P. 43-44). He continues to have difficulty with kneeling, squatting, and lifting. (Tr. P. 45-46). Petitioner testified he also experiences right knee weakness and pain. (Tr. 46-47).

Petitioner testified he returned to work for Respondent in August 2024 and has missed no time from work. (Tr.48-49). Petitioner testified that he has nearly full range of motion in his knee and was “happy” with the results of the surgery. *Id.* at 49.

Petitioner testified since returning to work in August 2024 he now earns more money than he was at the time of the injury (Tr.51). Petitioner further testified that he has not returned to Dr. Metzger or any other physician since August 2024. *Id.* at 51-52.

Medical

April 28, 2023- Petitioner presented to the Emergency Department at Condell Medical Center. (PX2). Notes from that visit reveal a history that Petitioner “was stepping off of a platform onto another level and twisted his right knee. He felt “it pop out and back in.” (PX2, P. 110). X-rays were taken and Petitioner was diagnosed with a right knee sprain, with suspicion of a lateral meniscus ligamentous injury. (PX2, P. 114). Petitioner was given a knee immobilizer and

crutches, instructed to use Tylenol/ibuprofen and ice for pain, and to follow up with an orthopedic doctor. (PX2, P. 114).

May 4, 2023- Petitioner followed up with an orthopedic doctor, Dr. Paul Metzger. (PX 1, P. 214- 218). A history noted Petitioner was a 50-year-old injured on the job while stepping off a platform and twisting his right knee, with immediate pain and difficulty bearing weight. (PX1, P. 216). Petitioner was prescribed an MRI and taken off work. (PX1, P. 218).

May 5, 2023- Petitioner underwent an MRI of the right knee. The MRI demonstrated a complete tear of the ACL, associated lateral tibial plateau contusion and joint effusion, and vertical tear of the medial meniscus with grade 2 proximal MCL injury. (PX1, P. 207-208).

May 11, 2023-Petitioner followed up with Dr. Metzger. Petitioner described pain in the knee limiting his ability to stand and walk longer distances. Petitioner described swelling of the knee. Petitioner denied distal numbness and tingling. Dr. Metzger reviewed the MRI. Dr. Metzger diagnosed Petitioner with a right knee work-related injury consistent with ACL tear and medial meniscus tear. Dr. Metzger recommended an ACL surgical repair with right knee ACL reconstruction with quadriceps allograft and arthroscopic medial meniscus root repair with partial meniscectomy (PX 1, P.193-196).

June 6, 2023- Dr. Metzger performed a right anterior cruciate ligament reconstruction with a donor graft and four metal anchors along with a medial meniscus repair. (PX1, P. 14-15).

June 9, 2023- Petitioner began post-surgical physical therapy at Rush Physical Therapy on June 9, 2023. (PX3, P. 5-11).

June 15, 2023-Petitioner had his first post-op visit with Dr. Metzger. (PX1, P. 134-137). At that time, Dr. Metzger recommended continued physical therapy, remain off work, and follow up in five weeks. (PX1, P. 137).

July 20, 2023- Dr. Metzger recommended continued physical therapy and indicated Petitioner could return to sedentary work. (PX1, P. 123).

August 31, 2023-Petitioner returned for an evaluation and it was noted Petitioner was having difficulty with stairs. (PX1, P. 106). Dr. Metzger recommended continued physical therapy, continued light duty, and return to the clinic in six weeks. (PX1, P. 108).

October 12, 2023- Dr. Metzger recommended continued light duty, additional physical therapy transitioning to work conditioning, and follow up in 8 weeks. (PX1, P. 90).

November 30, 2023-Petitioner returned to Dr. Metzger with complaints of anterior knee soreness with prolonged walking or climbing stairs. (PX1, P. 75). Dr. Metzger recommended continued physical therapy. (PX1, P. 77).

December 28, 2023 and January 25, 2024-Petitioner followed up with Dr. Metzger. During this time, he continued with physical therapy and work hardening. (PX1, P. 54-58, 62-66, PX3).

February 5, 2024- Respondent sent Petitioner to a §12 exam with Dr. Jeffrey Goldstein. (Tr. P. 36). The Arbitrator notes that the Respondent's §12 exam was not admitted into evidence by either party.

February 8, 2024- Petitioner returned to Dr. Metzger. (PX1, P. 47-50). Dr. Metzger's notes indicate Petitioner was still having pain while lifting and climbing ladders in work conditioning. (PX1, P. 48). Dr. Metzger recommended a return to regular physical therapy, remain off work, and follow up in four weeks. (PX1, P. 50).

February 2024 through April 2024- Petitioner remained in physical therapy.

March 7, 2024 and April 11, 2024-Petitioner returned to Dr. Metzger. (PX3, PX1, P. 30-33, 39-42).

May 23, 2024- Petitioner had completed 12 of 20 work hardening visits and presented again to Dr. Metzger.(PX1, P. 23). Dr. Metzger recommended a Functional Capacity Exam. (PX1, P. 25).

June 7, 2024- Petitioner completed physical therapy.

August 15, 2024- Petitioner underwent the Functional Capacity Exam. The FCE indicated that Petitioner demonstrated the ability to perform 100% of the physical demands of his job as a carpenter. The FCE noted that Petitioner provided consistent effort and that Petitioner tested with the ability to perform within the heavy physical demand category based on the definitions developed by the US Department of Labor as outlined in the Dictionary of Occupational Titles. The FCE indicates that Petitioner lifted 100 pounds to below waist height. Petitioner lifted 50 pounds to shoulder height and 50 pounds overhead. Petitioner carried 100 pounds. Petitioner's pushing abilities were evaluated and Petitioner pulled 93 horizontal push pounds and pushed 100 horizontal force pounds, respectively (PX 4, P. 6).

Further, the FCE indicates that non-material handling testing indicated that Petitioner demonstrated an occasional tolerance for ladder/other, stair climbing and stimulated

David Brimmer v. Advantage Moving & Storage
Case No. 23WC013238

lifting/carrying a heavy hutch or furniture from floor to wall for install. Petitioner demonstrated the ability to perform above shoulder reach, bending, crawling, forward reaching, repetitive kneeling, sustained kneeling, squatting, walking, sustained kneeling to simulate installing baseboard trim and install cleats on a wall to hang pictures and pushing/pulling a wheeled cart loaded with TV panels and/or mirrors to install with frequent tolerance. Sitting and standing were likewise demonstrated on a constant basis.

August 22, 2024- Petitioner returned to Dr. Metzger. Dr. Metzger noted “patient has regained excellent mobility and strength of his knee with no pain.” Dr. Metzger agreed with the results of the Functional Capacity Evaluation and released Petitioner to return to work as a carpenter in a full duty capacity. Petitioner was discharged from care (PX 1, P. 8).

CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness.

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

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, Petitioner was a carpenter for 30 years working in a heavy-duty industry. The functional capacity evaluation indicates this is heavy physical demand level lifting 100 pounds below waist height and 50 pounds to shoulder height and above head for which Petitioner was able to consistently perform. Petitioner further demonstrated tolerance for ladder/stair climbing as well as the ability to perform crawling, repetitive kneeling, and squatting. Petitioner has not returned to the doctor, physical therapist or any other physician since August of 2024. The Arbitrator gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that the Petitioner was 50 years old at the time of the accident. Petitioner was 50 years old at the time of the work accident on April 28, 2023. Petitioner's age appears to have had no bearing on his recovery as he made a full recovery and returned to work full duty in a heavy job. The Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there was no medical evidence presented linking any future disability to Petitioner's work accident of April 28, 2023. As a result, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes injury to Petitioner's right knee, which resulted in an ACL tear and medial meniscus tear, necessitating a donor graft and four anchors to repair the ACL. Petitioner underwent surgery, physical therapy and an FCE.

The functional capacity evaluation confirms that Petitioner can complete 100% of the physical demands of his heavy job as a carpenter. Dr. Metzger noted "patient has regained excellent mobility and strength of his knee with no pain." Dr. Metzger agreed with the results of the Functional Capacity Evaluation and released Petitioner to return to work as a carpenter in a full duty capacity.

Petitioner complains of residual complications such as sensitivity with knee pad straps and stiffness with weather changes. Notwithstanding, Petitioner was discharged from care in August 2024 and has not followed up with any physician since. Because of the nature of Petitioner's injury to his right knee, being able to meet 100% of the physical demands of his heavy job as a carpenter and being released to return to work full duty, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of use of a right leg pursuant to Section 8(e) of the Act, which corresponds to 64.5 weeks at weekly rate of \$998.02.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC033859
Case Name	Ana Maria Simental v. Southwest Airlines Co.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0182
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	James Urtis
Respondent Attorney	Daniel Wellner

DATE FILED: 6/17/2026

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANA MARIA SIMENTAL,

Petitioner,

vs.

NO: 24 WC 33859

SOUTHWEST AIRLINES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the stipulated July 10, 2024 accidental injury, temporary total disability, medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 13, 2025 is hereby affirmed and adopted.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current lumbar spine condition of ill-being is causally related to the stipulated accidental injury of July 10, 2024.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,013.33 per week for a period of 50 & 6/7ths weeks, representing September 5, 2024 through August 26, 2025, that being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that no award of medical expenses to date is necessary, as no such expenses were awarded in the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the lumbar spine surgery recommended by Dr. Mekhail as provided in §8(a) 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 the Petitioner on account of said accidental injury.

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

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

June 17, 2026

RAW/wde

/s/ *Raychel A. Wesley*

O: 4/22/26

/s/ *Carolyn M. Doherty*

43

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC033859
Case Name	Ana Maria Simental v. Southwest Airlines Co.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	James Urtis
Respondent Attorney	Daniel Wellner

DATE FILED: 11/13/2025

/s/ Jacqueline Hickey, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 12 2025 3.69%

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)

Ana Maria Simental

Employee/Petitioner

v.

Southwest Airlines

Employer/Respondent

Case # **24** WC **33859**

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 **Jaqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **8/26/25**. 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. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On the date of accident, **7/10/24**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$79,040**; the average weekly wage was **\$1,520.00**.

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

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

Respondent shall be given a credit of **\$14,475.90** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$14,475.90**.

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

ORDER

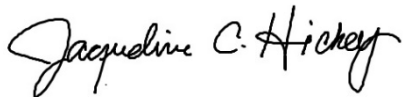
Respondent shall pay Petitioner temporary total disability benefits of \$1,013.33/week for 50 6/7 weeks, commencing 9/5/24 through 8/26/25, as provided in Section 8(b) of the Act.

Respondent shall pay the prospective reasonable and necessary medical services as provided in Section 8(a) of the Act, and as recommended by the treating physicians. Specifically, the Arbitrator awards the lumbar fusion surgery recommended by Dr. Mekhail, as well as any pre and post operative associated medical care. See Rider to Decision.

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

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

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



Signature of Arbitrator

NOVEMBER 13 2025

ANA MARIA SIMENTAL,)
)
 Petitioner,)
)
 v.) No. 24 WC 033859
)
 SOUTHWEST AIRLINES,)
)
 Respondent.)

1

Petitioner was seen at Concentra on the date of injury with lower right side back pain. (22). She was referred to physical therapy. She treated there until December 12, 2024. (23). She had mostly conservative therapy, consisting of therapy and an injection. She had no relief from the injection. (24). She also had an MRI scan of the lumbar spine performed on August 15, 2024, at Chicago Ridge Medical Imaging. (24).

She was then referred to Dr. Mekhail, a spine specialist. (25). He diagnosed her with L4-L5 and L5-S1 Spondylolisthesis with right lumbar radiculopathy. (25). He recommended a lumbar fusion. Dr. Mekhail also prescribed medications and a back brace. (25-26). Petitioner worked light duty until September 4 and then was off work. (27). She was paid temporary total disability until December 13, 2024. Petitioner rated her pain at a nine on a scale of ten during the hearing and a five on average. (28-29). Petitioner denied prior back pain. (30).

On cross-examination, Petitioner admitted that she filed a prior claim in 2011 alleging neck and back injuries. (33). At the request of Respondent, Petitioner also attended an independent medical examination with Dr. Deutsch on November 20, 2024. (32).

In terms of her employment, Ms. Simental worked light duty from the date of her injury, July 10, 2024, until September 4, 2024, whereupon there was no more light duty work available for her. Ms. Simental testified that she received TTD until December 12, 2024, but has not been paid TTD since that date. Ms. Simental also requests TTD from December 12, 2024, through the date of trial and until she recovers from surgery.

Ms. Simental testified she is unable to perform her job due to her low back injury and remains off work. Her pain is persistent and chronic, ranging 3-10/10 on a pain scale. Ms. Simental testified she wants to undergo the surgery proposed by Dr. Mekhail.

Summary of Medical Treatment

Petitioner was seen at Concentra on July 10, 2024. (Petitioner's Ex A). Petitioner provided a history that she was stocking her truck when she stood up and felt pain in her lower right back. She denied any history of previous back pain, injury or problems. Petitioner was diagnosed with a lumbar strain. She was provided with medications. She was also provided with physical therapy. She was provided restrictions of groundwork only and no driving the company vehicle. She was allowed to push or pull up to 20 pounds occasionally and lift up to 10 pounds occasionally.

Petitioner returned to Concentra on July 12, 2024. (PX A). It was noted that she still had pain in the right side of her lower back. She was doing physical therapy, and the notes indicated that she had intermittent numbness to the right foot. The diagnosis remained the same. She was told to continue medications and the same work restrictions. On July 19, 2024, Petitioner returned to Concentra. Petitioner was noting numbness in the toes of her right foot while standing long periods. No additional medications were provided. She was provided with the same work restrictions. On July 25, 2024, Petitioner returned to Concentra. He noted Petitioner had been working modified duty. The diagnosis continued to be a strain. She was told to continue physical therapy and her restrictions were continued.

Petitioner returned to Concentra on August 1, 2024. (PX A). Petitioner reported that her pain was getting better, but she had pain in her right buttock. Petitioner was taking medications which were helping and was going to physical therapy. She denied numbness, tingling or weakness of the bilateral lower extremities. She was diagnosed with strain of the lumbar region and sciatica of the right side. She was provided with additional medications. She was on a 10-pound lifting restriction. Petitioner returned to Concentra on August 8, 2024. She was still working light-duty. She was reporting lower back pain after sweeping the warehouse. She was going to physical therapy, and it was helping. An MRI scan of the lumbar spine was recommended. Petitioner was referred for additional physical therapy. Petitioner's work restrictions were continued.

On August 15, 2024, Petitioner had a lumbar MRI scan at Chicago Ridge Medical Imaging. (PX B). The scan was interpreted as showing graded 1 L4 over L5 degenerative spondylolisthesis. Petitioner had spondylitic degenerative changes with multilevel disc and osteophyte complexes most evident at L3-4 and L5 causing mild central canal stenosis and mild to moderate foraminal stenosis indenting the exiting nerve roots.

Petitioner returned to Concentra on August 16, 2024. (PX A). Petitioner was reporting pain while reaching below the waist and extending her back. Her medications and physical therapy were helping. She denied numbness, tingling and weakness of lower extremities. The diagnosis was sciatica of the right side and a lumbar strain. She was 50% of the way meeting the physical requirements of her job. Her work restrictions were continued.

She returned to Concentra on August 22, 2024. She was still working light duty. She was reporting pain while bending over and reaching. She has been working light-duty and sometimes that hurt her back depending on her tasks. She was denied numbness, tingling or weakness. She was referred to a physiatrist. She was continued on the same work restrictions and with medications.

On October 18, 2024, Petitioner had bilateral lumbar medial branch blocks at L3-4 and L4-5. Petitioner returned to Concentra on November 7, 2024. (PX A). She had lumbar disc disease at L5-S1, spondylolisthesis at L4-5 and facet arthropathy at L4-L5 and L5-S1. Petitioner could have an L4-S1 transforaminal lumbar interbody fusion versus proceeding with a Functional Capacity Evaluation to determine permanent work restrictions. She could continue with her current work restrictions.

On December 19, 2024, Dr. Mekhail treated Petitioner. (PX C). She provided a history of her injury. He diagnosed Petitioner with a L4-5 and L5-S1 spondylolisthesis and right lumbar radiculopathy. He noted that she was previously asymptomatic, but it was rendered symptomatic by the work injury. Specifically, he opined on 12/19/24 OVN, "I believe she had pre-existing spondylolisthesis that was rendered symptomatic by the work injury on 7/10/24." (PxC, pg 2 of 4). He recommended an L4-L5 and L5-S1 decompression and spinal fusion. He found that she could not return to work full duty and that there were currently no light duty options for her. Petitioner now wanted to proceed with surgery.

Section 12 Examination by Dr. Deutsch

On November 20, 2024, Dr. Deutsch performed an Independent Medical Evaluation. (Respondent's Exhibit 1). Petitioner provided a history of her injury and complained of back pain. The doctor reviewed medical records. He found that she had a lumbar strain. He found that her treatment thus far had been reasonable for the work accident and diagnosis of the lumbar strain. Dr. Deutsch did not believe she would benefit from further treatment and placed her at maximum medical improvement as of 10/10/24. He found she could return to work without restrictions for the lumbar strain. The doctor reviewed the MRI film that noted no objective findings except the reported underlying L4–5 spondylolisthesis. She had positive Waddell signs. She admitted prior surgical recommendation for her neck but denied any prior back pain.

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 Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a generally credible witness. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records as a whole. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any significant material contradictions that would deem this witness unreliable. Petitioner came across as a hard-working individual and long-term employee of respondent. She does not appear to be a sophisticated individual and any inconsistencies in her testimony are not attributed as an attempt to deceive the finder of fact. None of the physicians who treated her noted any symptom magnification, despite the section 12 examiner noting positive Waddell signs.

The Arbitrator finds all of the physicians involved in this case to be credible and is not persuaded by the opinions of IME Dr. Deutsch that petitioner only sustained a lumbar strain and is at MMI. Instead, the Arbitrator relies on the opinions of Dr. Mekhail regarding causation and the need for surgery. See below for further discussion.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner seeks out prospective medical care for her alleged ongoing back injury that she sustained at work. It is undisputed that Petitioner suffered an accident at work while stocking a plane in her position for Respondent. Respondent relies on its IME Dr. Deutsch in denying additional medical care and only finding causation for a lumbar strain suffered on the date of accident. The Arbitrator notes Dr. Deutsch notes petitioner had mild spondylolisthesis despite not finding that petitioner suffered an aggravation of any lumbar condition and despite not finding evidence of any objective injury on the MRI.

In Dr. Anis Mekhail's examination note of December 19, 2024, he plainly states, following his clinical examination of the Petitioner and his examination of the relevant films, that Petitioner suffers from L4-5 and L5-S1 spondylolisthesis with right lumbar radiculopathy. He goes on to opine, "I believe that she (Petitioner) had preexisting spondylolisthesis that was asymptomatic but rendered symptomatic by the work injury on 7/10/24."

Contrasted with Dr. Deutsche IME report which does not appear to provide a clear basis for his opinion that Petitioner has reached MMI and only suffered a lumbar strain, despite other findings on the MRI. His review of the same MRI film/report dated August 15, 2024, reveals, in his opinion, spondylolisthesis at L4-5. He additionally acknowledges that Petitioner had a 20 year history with her employer, Southwest Airlines, where her job was to lift heavy boxes of provisions for air travelers and that she had reported no history of low back pain prior to July 10, 2024.

The Arbitrator acknowledges that petitioner denied a prior history of back pain to her doctors and the IME, as well as on direct examination. But on cross examination by Respondent's attorney, petitioner admitted that she filed a prior claim in 2011 alleging neck injuries that also mentioned back pain or injury. It seemed during trial that Petitioner did not initially remember this injury or reported back pain from 14 years prior but later did acknowledge it. Despite this, the Arbitrator still finds petitioner to be credible despite not being the best historian.

The Arbitrator notes petitioner worked full duty for many years before this new and distinct back injury occurred. There was no evidence presented to suggest petitioner had missed work, required work restriction or had received treatment for her back in the ten plus years since the 2011 IWCC claim. It is clear and the doctors agree that petitioner suffered from at least preexisting spondylolisthesis at L4-5. Despite admitting to reporting back pain many years prior on cross examination, there is no evidence of additional treatment during this long gap in time. The Arbitrator therefore is persuaded that her lumbar condition of preexisting spondylolisthesis was asymptomatic for a long period of time and rendered symptomatic by the work injury on 7/10/24 per Dr. Mekhail. For the case at hand, the chain of events demonstrates a previous condition of good health for at least ten plus years, a specific and undisputed lifting back accident, and a subsequent lumbar injury requiring immediate treatment and time off of work, resulting in disability. This is sufficient circumstantial evidence to prove a causal nexus between the accident of 7/10/24 and petitioner's lumbar spine injury.

The Arbitrator therefore finds that Petitioner's current condition of ill-being is causally related to the injury of July 10, 2024.

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

Under the Illinois Workers' Compensation Act (820 ILCS 305/8(a)), an employer is obligated to pay for all necessary medical care reasonably required to cure or relieve the effects of a work-related injury, and this includes prospective medical treatment. 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 her lumbar spine condition, per Dr. Mekhail.

Having relied on the opinions of the treating physicians in finding causation for petitioner's current condition of ill-being of her lumbar spine, the Arbitrator further awards the prospective medical care Petitioner seeks. In this case, Petitioner's treating physician, Dr. Anis Mekhail, recommends lumbar decompression and fusion surgery, to relieve the pain associated with the work injury.

The Arbitrator finds Dr. Mekhail's opinions to be more persuasive and finds his prescribed surgical course of care is reasonable, and necessary to cure and relieve the effects of Petitioner's work injury. Respondent shall provide and pay for Petitioner's prospective medical care prescribed by Anis Mekhail, MD, pursuant to Section 8(a) and 8.2, and subject to the medical fee schedule, as well as any other reasonable, necessary and related pre and post operative care.

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

Under the Illinois Workers' Compensation Act (820 ILCS 305/8(b)), an injured worker is entitled to receive Temporary Total Disability (TTD) benefits when the injured worker is unable to work due to a work-related injury and is in the healing period. 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.* TTD benefits are owed when the treating physician takes the injured worker completely off duty or places the injured worker on restrictions that the employer cannot accommodate. The weekly TTD rate is two-thirds (66 2/3%) of the employee's average weekly wage (AWW), subject to statutory minimums and maximums which are not applicable in this matter. Benefits are payable until the worker reaches maximum medical improvement (MMI) or is able to return to work (either full duty or to light duty that the employer can accommodate). Section 8(b) of the Illinois Workers' Compensation Act expressly provides for payment of weekly compensation while the employee is temporarily totally incapacitated from work.

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein. On July 10, 2024, Petitioner was injured and due to that injury was unable to work in her capacity as a provisioning agent. Petitioner was immediately offered and did accept light duty work from Respondent and worked the same through September 4, 2024, after which no light duty work was made available for Petitioner. Respondent continued to pay Petitioner TTD through December 4, 2024; however, Petitioner has not been paid TTD since December 4, 2024. Having found petitioner's condition of ill-being to be causally related to the work accident of 7/10/24, the Arbitrator also awards TTD benefits.

Respondent shall pay Petitioner temporary total disability benefits of \$1,013.33/week for 50 6/7 weeks, commencing 9/5/24 through 8/26/25, as provided in Section 8(b) of the Act with a credit of \$14,475.90 being given to Respondent for the period of TTD paid to Petitioner by Respondent.

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

November 13, 2025
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018797
Case Name	Jacek Ejmont v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	19WC018640
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0183
Number of Pages of Decision	8
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Valarie Owino

DATE FILED: 6/17/2026

/s/Marc Parker, Commissioner

Signature

18 WC 018797

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jacek Ejmont,

Petitioner,

vs.

No. 18 WC 18797

State of Illinois – Department of Transportation,

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 benefit rates and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator ordered Respondent to pay Petitioner, inter alia, permanent partial disability benefits of \$948.46/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the right hand pursuant to Section 8(e) of the Act. However, the maximum permanent partial disability rate for Petitioner's April 19, 2018 date of injury is \$790.64. (820 ILCS 305/8(b)(4)). Accordingly, we modify the Section 8(e) award in this case to be \$790.64/week for 20.5 weeks. All else in the Decision of the Arbitrator is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 13, 2025, is hereby modified as stated above, 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.

18 WC 018797

Page 2

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

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.

June 17, 2026

MP/mcp
o-06/11/26
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	18WC018797
Case Name	Jacek Ejmont 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	Gerald Granada, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Valarie Owino

DATE FILED: 11/13/2025

/s/ Gerald Granada, Arbitrator
Signature

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



NOVEMBER 13 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF NOVEMBER 12 2025 3.69%

STATE OF ILLINOIS)
)SS.
 COUNTY OF KANKAKEE)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Jacek Ejmont
 Employee/Petitioner

Case # **18WC18797**

v.

Illinois Department of Transportation
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Kankakee, IL**, on **September 23, 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 19, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$82,200.00**; the average weekly wage was **\$1,580.77**.

On the date of accident, Petitioner was **35** years of age, *married* with **0** dependent children.

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

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

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

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

ORDER

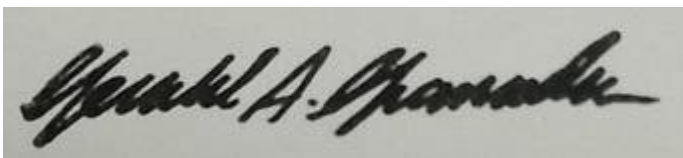
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$354.00 from Illinois Bone & Joint Institute, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of \$948.46/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the right hand, as provided in Section 8(e) of the Act.

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

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



Signature of Arbitrator Gerald Granada

NOVEMBER 13 2025

FINDINGS OF FACT

This case involves Petitioner Jacek Ejmont, who alleges to have sustained injuries while working for the Respondent Illinois Department of Transportation on April 19, 2018. Respondent disputes Petitioner's claim, with the issues being: 1) medical expenses; and 2) nature and extent.

Job Duties

Petitioner testified that he graduated with his Bachelor of Engineering from the University of Michigan. Petitioner has been employed by Respondent since 2008. On April 19, 2018, Petitioner was employed as Movable Bridge Supervisor. Petitioner's Job duties included ensuring maintenance and staffing of the moveable bridges and physically inspecting and responding to repair requests. Petitioner testified that he would often be required to go up and down the bridge while carrying repair equipment and power tools to perform his job duties.

Accident

On April 19, 2018, Petitioner testified that it was the end of day when he was notified that one of the bridges had malfunctioned. He put his hand into a box to determine whether the finger limit switches were in the right position when a 200 pound metal top cap fell on his right hand, crushing his index and middle fingers. He felt lots of pain and saw lots of blood.

Summary of medical treatment

On April 19, 2018, Petitioner presented to Saint Joseph Medical Center Emergency department. Px 2 at 23. X-rays of the right hand and right wrist were negative for fracture. *Id* at 24. Petitioner was diagnosed with a crush injury to the right hand. *Id*. Petitioner lost 2 fingernails and received a total of 15 stitches to the second and third digits. *Id* at 29. Petitioner was instructed to follow up with his primary care provider in two days and have the sutures removed in eight days. *Id* at 30.

On April 26, 2018, Petitioner presented at Advocate Health Care for hospital follow up. Px 1 at 2. Petitioner's chief complaints were numbness of the fingertips and complaints of the second digit not flexing as normal and avulsion to the nail. *Id*. Petitioner's sutures to the third digit were removed completely and steri-strips were applied. *Id* at 3. Sutures to the second digit were left in place and were to be removed later. *Id*. Petitioner's plan of care was to consult with Orthopedics the following Monday *Id*.

On May 1, 2018, Petitioner presented to Illinois Bone and Joint Institute ("IBJI") for follow up on the right finger. Px 4 at 24. On examination his right hand had some bruising over his index and long finger. *Id*. The remaining sutures were removed. *Id*. On May 29, 2018, occupational therapy was recommended to help with his range in motion and scar massage for his index finger and long finger. *Id* at 23. His diagnosis remained consistent, and he was given work restrictions. *Id*. Petitioner attended occupational therapy from June 20, 2018, to August 21, 2018. *Id* at 40-77.

On August 14, 2018, Petitioner returned to IBJI for follow up and was seen by Dr. Chen who diagnosed Petitioner with status post crush injury with residual inflammation of the intrinsic tendons. Dr. Chen decreased Petitioner's work restrictions accordingly and transitioned him from occupational therapy to home exercises. *Id* at 19. On September 21, 2018, Petitioner followed up for treatment at IBJI with the same symptom complaints. *Id* at 16. Dr. Chen recommended Petitioner remain on restrictions and continue with home exercises. *Id* at 17. On October 23, 2018, Petitioner presented for follow up with Dr. Chen stating that he continued to have pain

while making full fists between his index finger and long finger metacarpal. *Id* at 14. A cortisone injection was offered and Petitioner declined. *Id* at 15. On November 27, 2018, Dr. Chen diagnosed Petitioner with right hand continued intrinsic tendinitis as well as possible volar plate sprain. Petitioner was offered the injection again for his continued symptoms which he declined stating that he was getting better. *Id* at 13. Petitioner had returned to work without restrictions, and he wanted to see if his symptoms would be resolved without the injection. *Id*. On February 26, 2019, Petitioner presented for follow up with Dr. Chen. *Id* at 10. He noted that his hands felt slightly better and he had no issues doing his work. *Id*. Petitioner reported that he only had some issues when he hyper flexed his index finger and pressed his fist against flat surfaces. *Id*. He reported not having any issues with doing his work. *Id*. Petitioner was discharged from care at maximum medical improvement on this visit with Dr. Chen noting that Petitioner can make full fist and his index finger was nontender to palpation and did not hurt with hyperextension. *Id* at 11. Petitioner's bills from IBJI show a \$0 balance. *Id* at 28 to 39.

Current condition

Petitioner testified that he was able to return to work and did not lose any time due to this injury. Petitioner was released from care February 26, 2019, and has not sought any further treatment.

Petitioner testified that he currently experiences stiffness, pain at times especially in frigid weather, and has lost the ability to hold things securely. He testified that he is prone to dropping tools, keys, and often cannot operate a phone or radio with his right hand. He further testified that he has lost the ability to feel material he is touching with his index and middle finger.

Petitioner further testified that he believes that an outstanding bill of \$354 from IBJI went to collections.

CONCLUSIONS OF LAW

1. Regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment has been reasonable and necessary in addressing Petitioner's work-related conditions. This finding is supported by the preponderance of medical evidence. There was no utilization review offered to dispute the medical expenses as required by Section 8.7 of the Act. As such, the Arbitrator awards the related medical expenses of \$354.00 from IBJI (PX 4) subject to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical expenses paid and shall hold Petitioner safe and harmless for any amounts paid by the Respondent's group carrier.

2. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight and relevance to this factor; (ii) Petitioner was a moveable bridge supervisor, who was able to return to this job without restrictions - a factor to which the Arbitrator gives considerable weight and relevance; (iii) Petitioner was 35 years old at the time of injury - a factor to which the Arbitrator gives some weight and relevance; (iv) there was no evidence of future earnings being impacted due to this injury and the Arbitrator gives no weight or relevance to this factor; (v) there was evidence of disability which show that the Petitioner sustained a crush injury to his right hand from which Petitioner still has continued complaints including loss of grip strength, loss of sensation and weather sensitivity - the Arbitrator gives great weight and relevance to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 10% loss of use of the right hand as a result of the April 19, 2018 work accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018640
Case Name	Jacek Ejmont v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	18WC018797
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0184
Number of Pages of Decision	10
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Valarie Owino

DATE FILED: 6/17/2026

/s/Marc Parker, Commissioner

Signature

19 WC 018640

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jacek Ejmont,

Petitioner,

vs.

No. 19 WC 18640

State of Illinois – Department of Transportation,

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 benefit rates, causal connection, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator ordered Respondent to pay Petitioner, inter alia, permanent partial disability benefits of \$991.80/week for 75.25 weeks, because the injuries sustained caused the 35% loss of the right leg pursuant to Section 8(e) of the Act. However, the maximum permanent partial disability rate for Petitioner's December 3, 2018 date of injury is \$813.87. (820 ILCS 305/8(b)(4)). Accordingly, we modify the Section 8(e) award in this case to be \$813.87/week for 75.25 weeks. All else in the Decision of the Arbitrator is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 13, 2025, is hereby modified as stated above, 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.

19 WC 018640

Page 2

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

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.

June 17, 2026

MP/mcp
o-06/11/26
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	19WC018640
Case Name	Jacek Ejmont 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	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Rufus Barner

DATE FILED: 11/13/2025

/s/ Gerald Granada, Arbitrator
Signature

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



NOVEMBER 13 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF NOVEMBER 12 2025 3.69%

STATE OF ILLINOIS)
)SS.
 COUNTY OF KANKAKEE)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Jacek Ejmont
 Employee/Petitioner

Case # **19WC18640**

v.

Illinois Department of Transportation
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Kankakee** on **September 23, 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 **December 3, 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 **\$85,956.00**; the average weekly wage was **\$1,653.00**.

On the date of accident, Petitioner was **35** 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 for any benefits paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$19,666.00 from Impact Physical Therapy, and \$87,809.21 from Northwestern Medicine as provided in Sections 8(a) and 8.2 of the Act.

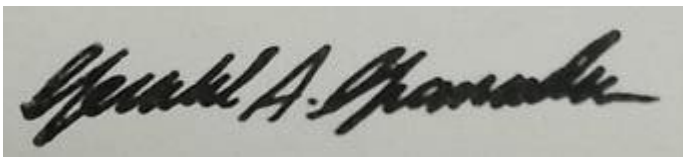
Respondent shall be given a credit for medical benefits that have been paid directly by Respondent or by Petitioner's group insurance and subject to Section 8(j) of the Act. The Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving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

Respondent shall pay Petitioner temporary total disability benefits of **\$1,102.00/week for 9 1/7 weeks**, commencing **12/16/21 through 2/18/22**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$991.80/week for 75.25 weeks, because the injuries sustained caused the 35% loss of the right leg, as provided in Section 8(e) of the Act.

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

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



Signature of Arbitrator Gerald Granada

NOVEMBER 13 2025

FINDINGS OF FACT

This case involves Petitioner Jacek Ejmont, who alleges to have sustained injuries while working for the Respondent Illinois Department of Transportation on December 3, 2018. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; 3) TTD; and 4) nature and extent.

Job Duties

Petitioner testified that he graduated with his Bachelor of Engineering from the University of Michigan. Petitioner has been employed by Respondent since 2008. On December 03, 2018, Petitioner was employed as Movable Bridge Supervisor. Petitioner's Job duties included ensuring maintenance and staffing of the moveable bridges and physically inspecting and responding to repair requests. Petitioner testified that he would often be required to go up and down the bridge while carrying repair equipment and power tools to perform his job duties.

Testimony

On December 3, 2018, Petitioner was at Brandon Road bridge, over the Des Plaines River, which had malfunctioned. Px 5 at 1. Petitioner testified that the malfunction was over a tight confined space that required climbing over other machinery to get to the equipment. Petitioner further testified that he climbed over the speed reducer, jumped off and felt his right knee pop and immediate pain. Petitioner's knee began to swell, and he had the bridge mechanic drive him to Silver Cross Hospital.

Petitioner testified that from the date of injury he treated consistently until an eight-month gap in 2019. Petitioner testified that following that gap, he returned for treatment in August 2019 and was discharged from care in October of 2019. Petitioner further testified that he did not return for treatment in all of 2020 although he was experiencing issues with his right knee. He testified that his orthopedic doctor was in a hospital, but he did not want to go back to the doctor due to the covid 19 pandemic. Petitioner testified that he returned for treatment in May 2021 which was a year and a half since his last visit.

Petitioner further testified that he did not suffer any subsequent injuries. Petitioner testified that in his personal life, he likes to play hockey and since the date of accident, he continued to play once in while under the guidance of his doctors. Petitioner further testified that he continued to play during the gap in treatment but did not seek his doctor's guidance. Petitioner testified that there were times when he could not play due to instability and pain that occurred when he played.

Petitioner testified that following his surgery in 2021, he was off work from December 16, 2021, to February 18, 2022. Petitioner testified that he depleted his sick leave during this time.

Summary of medical treatment

On December 3, 2018, Petitioner presented to Silver Cross Hospital emergency department with a chief complaint of right knee pain. Px 3 at 9. Petitioner's x-ray was negative for fractures, and a mild joint effusion was noted. *Id* at 12.

Petitioner treated at Midwest Orthopedics on December 10, 2018, with Dr. Cole. Dr. Cole diagnosed Petitioner with a likely right knee grade one medial collateral ligament sprain. Px 6 at 38. Physical therapy was recommended and an MRI if the pain did not improve. *Id*.

Jacek Ejmont v. Illinois Department of Transportation, 19WC018640**Attachment to Arbitration Decision****Page 2 of 4**

Petitioner underwent a course of physical therapy from December 21, 2018, to January 18, 2019. Px 5 at 5–51. On January 10, 2019, Petitioner reported that his dog jerked the leash, and he fell onto his right knee. *Id* at 23. Petitioner noted that his right knee was feeling better, and that he had less pain with pivoting and lateral motion. *Id*. Petitioner also reported playing hockey and running during this period. *Id*.

Petitioner presented to Illinois Bone and Joint on February 26, 2019, with a chief complaint of left ankle pain. Px 4 at 8. Petitioner stated that he was playing three weeks ago when another player ended up rolling up onto his calf. *Id*.

Petitioner did not return for further care until August 22, 2019, with Dr. Cole at Midwest Orthopedics. Px 6 at 28. Dr. Cole noted that he had not seen Petitioner since December 2018. *Id* at 38. Petitioner noted that he had persistent discomfort despite going through physical therapy. *Id* at 11. His chief complaint was anterolateral right knee pain with hyperextension, extension, and deep flexion of the knee. *Id*. Dr. Cole recommended an intra-articular injection. *Id*. Petitioner was working full duty with restrictions. *Id* at 12. On September 9, 2019, Petitioner underwent an intraarticular joint injection in the right knee. *Id* at 21. Petitioner was diagnosed with a right knee medial collateral ligament sprain and intraarticular derangement. *Id*. Petitioner followed up with Dr. Cole on September 12, 2019, and reported that he was doing great. *Id* at 36. Dr. Cole placed Petitioner and maximum medical improvement and noted that he should continue home exercises. *Id* at 25.

On May 24 2021, later, Petitioner returned to Midwest Orthopedics and was diagnosed with a complex medial meniscus tear in the right knee. Px 6 at 117. On June 02, 2021, Dr. Cole noted that Petitioner had been initially diagnosed with MCL sprain related to his work injury on December 03, 2018, and treated conservatively until he was at maximum medical improvement on October 24, 2019. *Id* at 21. An MRI was ordered which showed a new complex medial meniscus tear. *Id* at 11. Dr Cole recommended a right knee arthroscopy and medial meniscectomy. *Id*. Dr. Cole noted that Petitioner had an ACL abnormality that was read as a chronic tear on report, however a majority of the fibers were intact. *Id* at 13. Dr. Cole further noted that previous physical exam of ACL was normal, and Petitioner had had no complaints of instability therefore a right knee arthroscopy and medial meniscectomy would not be warranted. *Id* at 11.

Petitioner underwent an IME on August 4, 2021, with Dr. Miller. Rx 3 at 3. Dr. Miller opined that jumping down a few feet and twisting his knee could cause an anterior cruciate ligament injury and/or medial meniscus tear. *Id* at 4. However, Dr. Miller noted that Petitioner had at least two or three subsequent incidents where he twisted his knee increasing his pain. *Id*. Petitioner reported that he had played hockey as recently as six months prior to the examination date and was consistently playing two times a month up until February 2020. *Id* at 3. Petitioner further admitted to a new left knee injury but denied any right knee injury. *Id*. Dr. Miller noted that the MRI could only show the condition of the knee at the time of the MRI. *Id*. He found that, to a reasonable degree of orthopedic surgical certainty, he could not relate Petitioner's current condition to the accident in question. *Id*.

On November 8, 2021 Petitioner saw Dr. Gryzlo at Northwestern. Px 8, pg. 653-654. He testified that he went to Northwestern as Dr. Cole's office would not accept his group insurance. Dr. Gryzlo's note stated that the injury was work related: Petitioner is here "for right knee issues that began at work. He had a work injury in early December 2018. He states at that time he was a bridge engineer inspecting a bridge, jumped about 3 feet down and felt a twisting, popping injury. He had immediate pain." *Id*. On December 17, 2021, Petitioner underwent a right knee arthroscopy, ACL reconstruction with hamstring quadruple semitendinosus tendon graft, and partial medial meniscectomy. Px 8 at 445-457. The post operative diagnosis was a right knee chronic ACL tear with degeneration of the posterior horn, and a middle horn medial meniscus tear. Px 8 at 653. Petitioner completed post operative physical therapy and was authorized to return to work without restrictions effective February 17, 2022. *Id* at 11. Petitioner last treated for his right knee on December 12, 2023, where it was noted that he was doing well. *Id*.

Current condition

Petitioner testified that currently, he still experiences pain and has limitations when it comes to kneeling or lateral movement. He also cannot sit cross legged.

Petitioner's Medical Bills

Petitioner's medical bills were submitted into evidence and are listed on exhibit A on the Request for Hearing form. The bills include those from Impact Physical Therapy in the amount of \$19,666.00 (PEX 7, pg. 409-442), Northwestern Medicine in the amount of \$87,809.21 (PEX 8, p. 749-826).

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the medical evidence which show that following this incident, Petitioner injured his right knee and was eventually diagnosed with a complex medial meniscus tear, chronic anterior cruciate ligament tear, small flap of tissue or torn anterior cruciate ligament, superficial medial and lateral compartment articular cartilage fibrillation, small joint effusion with synovitis, and trace baker's cyst for which he underwent an injection, physical therapy and surgical repair. Both Dr. Cole and Dr. Gryzlo opined that Petitioner's conditions were related to his December 3, 2018 accident. Although Respondent obtained an IME opinion from Dr. Miller in which he could not relate Petitioner's condition to his original work accident, Dr. Miller did confirm that the accident described by Petitioner could cause an anterior cruciate ligament injury and/or medial meniscus tear. Given the preponderance of the evidence, the Arbitrator concludes that the Petitioner's current condition of ill-being in his right knee is causally connected to his December 3, 2018 work accident.
2. Regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment has been reasonable and necessary in addressing Petitioner's work-related conditions. This finding is supported by the preponderance of medical evidence. There was no utilization review offered to dispute the medical expenses as required by Section 8.7 of the Act. As such, the Arbitrator awards the related medical expenses of \$19,666.00 from Impact Physical Therapy (PX 7) and \$87,809.21 from Northwestern Medicine (PX 8) subject to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical expenses paid and shall hold Petitioner safe and harmless for any amounts paid by the Respondent's group carrier pursuant to Section 8(j) of the Act.
3. Regarding the issue of TTD and consistent with the findings above, the Arbitrator further finds the Petitioner was temporarily totally disabled from December 16, 2021 through February 18, 2022. This finding is supported by Petitioner's un rebutted testimony and the medical evidence that show Petitioner was completely taken off work during this time period. Therefore, the Arbitrator awards Petitioner TTD benefits for the aforementioned time period and Respondent shall be credited for any TTD it has paid.
4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was submitted into evidence and the Arbitrator gives no weight and relevance to this factor; (ii) Petitioner was a moveable bridge supervisor, who was able to return to this job without restrictions - a factor to which the Arbitrator gives considerable weight and relevance; (iii) Petitioner was 35 years old at the time of injury - a factor to which the Arbitrator gives some weight and relevance; (iv) there was no evidence of future earnings being impacted due to this

injury and the Arbitrator gives no weight or relevance to this factor; (v) there was evidence of disability which show that the Petitioner sustained an injury to his right knee resulting in a torn meniscus and torn ACL requiring surgical repair including an ACL reconstruction with hamstring tendon graft and partial meniscectomy from which Petitioner still has continued complaints including pain with kneeling and lateral movements - the Arbitrator gives great weight and relevance to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 35% loss of use of the right leg as a result of the December 3, 2018 work accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009505
Case Name	Teresa Perez (On Behalf of Husband Guillermo Garcia) v. ABM Industry Group, LLC & RAF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0185
Number of Pages of Decision	26
Decision Issued By	Kathryn Doerries, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Lorena Hernandez
Respondent Attorney	Christopher Jarchow

DATE FILED: 6/18/2026

/s/ Kathryn Doerries, 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

TERESA PEREZ ON BEHALF OF
 DECEASED HUSBAND GUILLERMO GARCIA,

Petitioner,

vs.

NO: 21 WC 009505

ABM INDUSTRY GROUP, LLC., AND
 ILLINOIS STATE TREASURER AS
 EX-OFFICIO CUSTODIAN OF THE
 RATE ADJUSTMENT FUND,

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, occupational disease, causal connection, temporary total disability, permanent disability, Section 7(a) death benefits, Section 7(b) burial expenses, and all other applicable legal and evidentiary issues, and being advised of the facts and law, affirms and adopts the corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the corrected Decision of the Arbitrator filed September 26, 2025 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

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

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

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

June 18, 2026

O: 04/21/26

KAD/swj

042

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

Dissent

I respectfully disagree with the majority's opinion and would reverse the Decision of the Arbitrator. After a thorough review of the evidence and law, I would find that Petitioner failed to prove her husband contracted the Covid-19 virus as a result of a workplace exposure arising out of and in the course of his employment under the Occupational Diseases Act. For the reasons set forth below, I would find the rebuttable presumption under §1(g) is not applicable in this case, and, even assuming its applicability, I would find Respondent presented sufficient evidence to overcome the rebuttable presumption, thereby shifting the burden of proof to Petitioner. I would further find Petitioner failed to prove by a preponderance of the evidence that her husband's place of employment was more probably than not the source of his fatal exposure to the Covid-19 virus.

I. Background

Petitioner's husband, Guillermo Garcia (hereinafter "Garcia"), was employed as a janitor by ABM Industry Group. During the months of June and July in 2020, Garcia was assigned to work at a UPS warehouse distribution facility located in Elk Grove Village. The facility was not open to the general public. The facility had a separate office area with cubicles. The warehouse was about 100,000 square feet in size and the office area was about 20,000 square feet in size. Garcia worked in the office area section of the building and there was no credible evidence to suggest he had any physical contact with the warehouse workers, if any. His job duties were limited to cleaning the office area, picking up trash at each desk, vacuuming the carpet, cleaning and disinfecting the bathrooms, and sweeping and mopping the floors. According to the operations manager who supervised Garcia, he was the only janitor assigned to work in the office area. The 20,000 square foot office area was sparsely populated as most of the UPS office staff worked remotely during June and July and there were no more than ten to twelve UPS employees working during Garcia's shift plus the security officers stationed at the facility's entrances. There were no

reported Covid cases for this UPS location in June or July prior to Garcia's diagnosis, and one UPS worker reported a positive test result about two days after Garcia's diagnosis.

Petitioner testified Garcia started "feeling sick" about a week before he tested positive for Covid at the emergency room on July 14, 2020. (T. 22) That places the onset of symptoms on or around July 7, 2020, per Petitioner's testimony. Petitioner testified Garcia was experiencing muscular pains, chills, and a lot of coughing with phlegm but did not report it to ABM because he wanted to keep working and he didn't want to "miss out." (T.22) Petitioner testified that in July 2020, Garcia worked with 3 people: "himself, another person, and a supervisor." (T.32) She admitted she had no familiarity with the UPS location where Garcia worked.

According to the medical records, Garcia reported he developed symptoms of a cough and difficulty breathing on Friday, July 10, 2020. (PX1 at 12) On Monday, July 13, 2020, Garcia went to work and was sent home. Petitioner testified a supervisor sent her husband home early; however, the operations manager testified Garcia was refused entry by security when he showed up to work appearing sweaty with a noticeable cough. On Tuesday, July 14, 2020, Garcia saw a primary care physician, Dr. Ayush Shah, at Northshore Community Health Center for a previously scheduled appointment. Garcia was under management for diabetes, NASH cirrhosis, chronic anemia and thrombocytopenia, and obstructive sleep apnea. (PX1 at 2424-2425) Garcia complained of a cough which started on Friday. He also complained he "gets out of breath" when he coughs a lot, and was having difficulty breathing "right now." (PX1 at 2425)

The documented history also indicated that Garcia had been recently diagnosed with right lower leg cellulitis in March 2020 and prescribed doxycycline. Garcia returned to the clinic on May 21 and June 8, 2020 for the same condition. Garcia was also seen in the emergency department for his cellulitis on June 23, 2020, and had blood drawn for lab testing. (PX1 at 2425, 122) The history further indicated that Garcia was last seen at the clinic on June 29, 2020, approximately 8 days before the onset of his Covid symptoms per the history provided by Petitioner or 11 days per the history provided by Garcia to Dr. Shah. (PX1 at 2425)

When he presented to the Northshore Community Health Center on July 14, 2020, which was located at Evanston Hospital, they suspected Garcia had Covid and directed him to the hospital emergency department. In the emergency room, Garcia's chief complaint was listed as difficulty breathing. The attending emergency room physician documented a history of coughing with yellow phlegm that began three days ago on Friday. (PX1 at 12) The attending physician further noted that Garcia had a doctor's appointment prior to arrival where he was found hypoxic to 85% on room air (inadequate oxygen level) and brought to the emergency department. Garcia denied any "known Covid contacts in the past 14 days." (PX1 at 12) Garcia tested positive for Covid and was admitted due to the severity of his symptoms. Garcia remained hospitalized until he passed away on August 17, 2020.

On the same day Garcia presented to the emergency room, Petitioner went to a testing center and she too tested positive for Covid but she did not have any symptoms. (T. 24, 30-31) Petitioner testified she was not employed outside the home during this time period. She and Garcia lived alone in an apartment building with four units, only two of which were occupied. Petitioner testified she and Garcia did not socialize with the tenants in the other apartment due to a language

barrier. Petitioner testified neither she nor her husband traveled outside the country prior to their Covid diagnoses and they did not attend any social gatherings. Petitioner testified they had three adult children who performed the grocery shopping and dropped off the groceries at their door without coming inside. Petitioner testified they had no contact with their children during the months of June and July. According to Garcia's daughter who also testified, none of the three children tested positive for Covid during the time period in question.

Petitioner further testified that she and Garcia stayed home and watched movies during the pandemic and her husband stayed at home when not working. (T. 34-35) This testimony conflicts with the entries in Garcia's medical records. It is clear Garcia did not just go to work and home but also visited the health care clinic multiple times including on June 23 and June 29, 2020, for treatment of cellulitis. The Decision of the Arbitrator does not address these visits to the clinic. Not only does this conflict pose a credibility concern in relation to Petitioner's ability to accurately remember Garcia's activities and comings and goings during the months of June and July, the visits to the health care clinic on June 23, 2020 and June 29, 2020, fell within the incubation period for the Covid-19 virus if July 7 was the onset date and the health care clinic visit on June 29, 2020 fell within the incubation period if July 10 was the onset date. This constituted additional crucial evidence bearing directly on the questions of whether there was an alternative source of exposure and whether there is a preponderance of credible evidence causally connecting Garcia's Covid illness to his workplace.

Respondent presented the testimony of Ms. Rodica Ceh, the operations manager responsible for the UPS account. Ms. Ceh testified the general public was not permitted inside the facility and Garcia's employment did not bring him into contact with the general public. Ms. Ceh testified that she supervised Garcia when he was assigned to the UPS warehouse and his janitorial duties were limited to the office area. Ms. Ceh testified that Garcia was the only ABM employee working at that location during his shift. Ms. Ceh testified the office area inside the UPS warehouse was 20,000 square feet in size; however, most of the UPS office staff worked remotely during the pandemic and there were at most only ten or twelve UPS employees in the office area. Garcia's shift began at 2:00 p.m. and ended at 10:00 p.m. Ms. Ceh testified the number of UPS employees in the office area was probably less by the time Garcia began his shift. According to Ms. Ceh, Garcia was the *only* ABM employee who tested positive for Covid in July 2020. Ms. Ceh also testified there were no reported Covid infections among the UPS employees before Garcia was diagnosed. She testified one UPS employee tested positive two days *after* Garcia tested positive. It is unknown from the record before us whether that UPS employee worked in the office area or the warehouse, and it is unknown whether Garcia and this UPS worker ever had contact with each other.

Ms. Ceh further testified to the safety measures implemented and the safety meetings she conducted. Garcia was provided with a face mask, rubber gloves, and hand sanitizer. Security officers were stationed at the entrances and all employees were required to wear a mask for entry. Ms. Ceh testified that in the beginning of the pandemic they supplied cloth face masks and then replaced those with surgical masks by June or July. Ms. Ceh testified the employees were then required to use the surgical masks. Respondent also provided training on how to properly wear the face masks. Ms. Ceh testified it was company policy to maintain a minimum distance of 6 feet away from each other. The employees were instructed they were not to take breaks at the same

time and not eat together. The employees were instructed to avoid using the restrooms at the same time. Ms. Ceh also testified that Respondent had a handwashing policy and hand sanitizer was distributed to every location. Ms. Ceh testified that Respondent also had a policy addressing situations where employees had Covid-like symptoms. That policy was also communicated to the employees, including Mr. Garcia. Ms. Ceh also testified its Covid prevention policies were posted in the premises. Ms. Ceh testified there were no other reported cases of Covid-19 at the Elk Grove location during the months of June and July 2020. Ms. Ceh testified that OSHA conducted an investigation after Garcia passed away. According to Ms. Ceh, OSHA found Respondent in compliance with Covid-19 regulations and that no violations were found. Parenthetically, Petitioner testified she observed her husband leave for work with a facemask.

On cross-examination, Ms. Ceh testified that the Covid safety policies were also disseminated in Spanish. Ms. Ceh described the office area as an open space with cubicles separated by short partitions. She testified there were no private offices in the space. Ms. Ceh testified that UPS had about 10 employees working in the office area at that time but the number was probably less by the time Garcia arrived for his shift. Ms. Ceh testified that UPS also provided PPE to its employees. Ms. Ceh further testified that everyone was wearing face masks and no one could get through security without wearing a face mask. Ms. Ceh testified that anyone at the facility had access to the bathrooms cleaned by Garcia. On further questioning, Ms. Ceh testified that the office employees and ABM employees had access to the bathrooms; she never stated that the warehouse workers had access to the bathrooms located inside the office area and she was never asked. (T. 66) Ms. Ceh testified there were no reports of any UPS employees having tested positive for Covid in July 2020, except for a report of one UPS employee who tested positive about two days *after* Garcia was diagnosed. (T. 71-72) Ms. Ceh testified that Garcia was the only ABM employee who tested positive for Covid-19 in July 2020. (T. 73)

Respondent also provided the opinion report and deposition testimony of its Section 12 physician, Dr. Leonard Go, who performed a records review. Dr. Go is board certified in pulmonary medicine and critical care medicine. (RX2 at 5) In his report, Dr. Go opined, “[t]here is insufficient evidence in the available records to indicate that Mr. Garcia’s COVID-19 infection was causally related to his work activities.” (RX2, Dep Exh. #2) At his deposition, Dr. Go explained that determining the source of exposure primarily requires information relating to known contacts with infected individuals. When determining whether Covid was acquired in the workplace, he testified he asks were there any sick contacts at work and whether there were any sick contacts outside of work as well. Absent known contacts, the risks of exposure may be weighed by factors such as number of persons present and ventilation, but known contacts is the primary factor for determining the source of exposure. Asked if one could render a causation opinion with certainty if we assume that evidence of known contacts does not exist, Dr. Go replied, “I have no information on which to form an opinion.”

On cross-examination, Dr. Go testified he specializes in occupational lung disease. Regarding the Covid-19 virus, Dr. Go testified the typical incubation period between exposure and onset of symptoms falls between one or two days and out to 14 days, with the majority of Covid infections developing within seven days or so following exposure. (RX2 at 17-18) Asked to assess the risk of an employment-related exposure for janitorial jobs like Garcia’s, Dr. Go testified it depends more on the setting rather than the specifics of working as a janitor. (RX2 at 19) For

example, a janitor working at a hospital would be at a far higher risk compared to a janitor working in a sparsely populated building. (RX2 at 19-20) Dr. Go emphasized that known cases of Covid infections at the workplace would have been a more significant factor for increasing the risk of infection compared to other factors. (RX2 at 21) Dr. Go further testified, “I would like to think that I kept an open mind about the possibility that Mr. Garcia acquired a Covid-19 infection in the workplace, but there were no other pieces of information that suggested that there was direct exposure there.” (RX2 at 20)

II. Rebuttable Presumption for Front-Line Workers

On June 5, 2020, the General Assembly amended the Occupational Diseases Act by adding subparagraph (g) to §1, which created a rebuttable presumption in order to protect first responders and front-line workers who continued working during the pandemic. 820 ILCS 310/19(g). This rebuttable presumption was made available to first responders and front-line workers diagnosed with Covid-19 during the timeframe of March 9, 2020 to December 31, 2020. The sunset date was later extended to June 30, 2021. For those workers considered first responders and front-line workers, the contraction of Covid-19 was presumed to have been causally related to the hazards of the job and presumed to have arisen out of and in the course of employment. The rebuttable presumption also applies to workers employed by essential businesses and operations. 820 ILCS 310/1(g)(2).

Section 1(g)(2) provides that front-line workers employed by essential businesses, as defined in Executive Order 2020-10 dated March 20, 2020, are entitled to the rebuttable presumption, “*as long as individuals employed by essential businesses and operations are required by their employment to encounter members of the general public or to work in employment locations of more than 15 employees.*” (Emphasis added.) 820 ILCS 310/1(g)(2). Ms. Ceh testified that members of the general public were not permitted inside the UPS warehouse facility. This was un rebutted and thus Petitioner can avail herself of the rebuttable presumption only if Garcia’s location of employment had more than 15 employees.

Respondent argues there was no evidence proving Garcia worked in a location with more than 15 employees. I agree. Ms. Ceh testified that Garcia was the only ABM worker assigned to the office area at this UPS facility during his shift. Ms. Ceh further testified there were no more than ten to twelve UPS employees working in the office area, with the total number probably less after Garcia began his 2:00 p.m. shift. Based on this evidence, the maximum total number of workers inside the office area with Garcia included did not reach the minimum 16 workers needed to trigger the rebuttable presumption. Ms. Ceh also testified “there was one security officer at each entrance of the facility.” (T. 48) There was no testimony, however, as to the number of entrances to the building and no evidence as to the number of entrances leading to the office area inside the facility. There is no evidence to suggest that office workers and warehouse workers shared the same entrances and there was no evidence to suggest that office workers walked through the interior of the warehouse to reach the office area. If there was one entrance for the office area, then the total maximum employees at Garcia’s employment location equaled 14 workers (Garcia + 12 UPS office workers + one security guard). If there were two separate entrances for the office area, then the total number of employees at this location would be 15, which fails to meet the threshold of “more than 15” to trigger the rebuttable presumption. Based on the totality of the evidence, I

would find there was insufficient credible evidence to find “more than 15 employees” worked in the office area.

Furthermore, I do not believe the employees working in the adjacent warehouse should be included without evidence of contact between Garcia and the warehouse workers or any evidence regarding the number of warehouse workers. There is nothing in the statute to suggest it was the intention of the legislature to treat an entire office facility or industrial park as a “location” under §1(g)(2). If the word “locations” as used in the phrase “locations of more than 15 employees” is broadly applied to include adjoining spaces, then the rebuttable presumption would extend to every essential business merely because of their proximity to workers employed by other entities even if no physical encounters occur with those working in the adjoining spaces. Petitioner makes the argument, in order to bring the warehouse workers within the sphere of Garcia’s employment location, that Garcia was exposed to workers in the “entire facility” who might use the bathrooms; however, I find there was no credible evidence presented to suggest that warehouse workers used the bathrooms in the office area. (Petitioner’s response brief at 8, 11). As mentioned, Ms. Ceh initially testified that anyone at the facility had access to the bathrooms cleaned by Garcia; however, on further questioning Ms. Ceh testified the office employees and ABM employees had access to the bathrooms; she never stated that the warehouse workers had access to the bathrooms located inside the office area and she was never specifically asked about the warehouse workers. (T. 66) The office area had 20,000 square feet and the warehouse had about 100,000 square feet. The warehouse alone was the approximate size of two football fields. It was certainly probable that bathrooms were located in the warehouse part of the structure. Accordingly, there was insufficient evidence to support the inclusion of the warehouse workers as part of Garcia’s location of employment and I would find the rebuttable presumption inapplicable here based on the evidence before us.

III. Presumption Rebutted

Assuming arguendo the rebuttable presumption applies in this case, I believe Respondent rebutted the presumption by presenting credible evidence Respondent engaged in and enforced workplace sanitation, social distancing, and health and safety practices based on guidance issued by the CDC and IDPH. Respondent also presented evidence of an alternate source of exposure. If the presumption was rebutted, then Petitioner had the burden to prove, by a preponderance of the evidence, that Garcia contracted the Covid-19 virus at his place of employment. *Lucero vs. Focal Point, LLC*, 22 IWCC 231, 2022 Ill. Wrk. Comp. LEXIS 218. Pursuant to §1(g)(3), the rebuttable presumption may be rebutted by evidence, including, but not limited to, the following:

- A. The employee was working from home (or on leave) for a period of 14 or more consecutive days immediately prior to the employee’s occupational disease resulting from exposure to COVID-19; or
- B. The employer was engaging in to the fullest extent possible or enforcing to the best of its ability industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the Centers for Disease Control and Prevention or Illinois Department of Public Health to reduce the transmission of COVID-19 to all

employees for at least 14 consecutive days prior to the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19. For purposes of this subsection, "Personal protective equipment" includes, but is not limited to, items such as face coverings, gloves, safety glasses, safety face shields, barriers, shoes, earplugs or muffs, hard hats, respirators, coveralls, vests, and full body suits; or

C. The employee was exposed to COVID-19 by an alternate source.

The Commission has interpreted the rebuttable presumption set forth in §1(g)(3) as an ordinary presumption, meaning the employer need only introduce "some evidence" that the employee's occupation was not the cause of the disease in order to rebut the presumption. "Some evidence" is defined as sufficient evidence to support a finding that something other than the claimant's occupation caused his condition. *Crowder vs. Cedarhurst of Collinsville*, 24 IWCC 0056, 2024 Ill. Wrk. Comp. LEXIS 59, citing *Johnston vs. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC, P44. The amount of evidence required to rebut an ordinary presumption is not determined by any fixed rule. *Id.* at P39. See also, *Snyder vs. Village of Bradley*, 24 IWCC 0047, 2024 Ill. Wrk. Comp. LEXIS 47. In weighing the evidence, we must be mindful that the rebuttable presumption set forth in the statute addresses *efforts to reduce, not eliminate*, the transmission of Covid-19. *Crowder*, 24 IWCC 0056, 2024 Ill. Wrk. Comp. LEXIS 59.

It must be noted that the arbitrator's decision, and now the majority decision, finds both that Respondent failed to rebut the presumption and later finds Respondent did present "some evidence" and did rebut the presumption. I agree with the second finding and would find under these facts, Respondent did rebut the presumption overwhelmingly. Based on the un rebutted testimony of Ms. Ceh, I would find Respondent produced "some" evidence to rebut the presumption under both subparagraphs B (mitigation efforts) and C (alternate source) as provided in §1(g)(3) of the Act. Respondent supplied educational materials to its employees for safety in both English and Spanish and provided masks, gloves, and hand sanitizer. Social distancing was mandated. Respondent also mandated that anyone having symptoms must stay home and anyone who tested positive was required to report the results to the company. If a UPS worker tested positive, then UPS would share that information with Respondent, and enhanced cleaning would be provided. Security officers stationed at the entrances did not allow workers entry into the facility if they did not have a mask. Most significant is Ms. Ceh's testimony, that a security officer denied Garcia entry into the facility on July 13, 2020, because he appeared sweaty and with a noticeable cough. This demonstrates that Respondent not only engaged in health and safety practices but that they were strictly enforced when they denied a visibly symptomatic employee access to the workplace.

In addition, Respondent presented "some" evidence of an alternate source of exposure. After her husband tested positive, Petitioner underwent Covid testing and also tested positive for the virus on July 14, 2020. Clearly, Petitioner was an alternate source of exposure that satisfies Section 1(g)(3) and rebuts the presumption of compensability. Furthermore, even though Petitioner testified Garcia did not go anywhere other than work and home before he was diagnosed with Covid, the treating medical records admitted into evidence refute this testimony. The medical records show Garcia received medical treatment for cellulitis on multiple occasions during the

month of June, specifically on June 8, 2020, June 23, 2020, and June 29, 2020. Notably, Garcia's visits to the clinic on June 23, 2020, and June 29, 2020, both fell within the 14-day incubation period if Petitioner's testimony that Garcia's symptoms began a week before the July 14 emergency room visit is accurate. Even if the July 10, 2020 onset date as reported by Garcia in the medical records is accurate, the June 29, 2020 visit falls within the 14-day incubation period. This qualifies as evidence of another potential alternate source of exposure for Garcia's Covid infection that is not addressed in the decision.

IV. Petitioner's Burden of Proof under §1(d) of the ODA

As the rebuttable presumption was rebutted, the burden of proof thus shifted to Petitioner to prove Garcia contracted the disease at his place of employment. Pursuant to §1(d) of the Occupational Diseases Act:

A disease shall be deemed to arise out of the employment if there is apparent to the 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 have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence. 820 ILCS 310/1(d).

The paucity of evidence in the case at bar is similar to the evidence presented in *Sperling vs. Industrial Comm'n*, 129 Ill. 2d 416, 544 N.E.2d 290 (1989), where claimant failed to satisfy her burden of proof due to the absence of evidence showing any encounters with known infected persons. In *Sperling*, an operating room nurse filed a claim alleging she contracted the hepatitis B virus from exposure to blood and fluids while handling sharp instruments in the operating room. The nurse claimed she pricked herself at least once a week as a result of her job duties; however, she was unable to identify any specific incident where she had been pricked with an instrument tainted with blood, and there was no evidence she came into contact with any patients infected with the disease. The nurse presented medical opinion testimony from one treating physician who opined that she likely contracted the disease at work because healthcare workers have an increased risk of contracting the disease. A second treating physician testified he was unable to determine the source of infection without more information. That physician explained that the hepatitis B virus is transmitted through bodily secretions, sexual activity, and through contact with the blood of an infected person, and while the potential for infection is present in the operating room, more information was needed including the nurse's personal and sexual history. The Commission determined the claimant failed to prove causation and denied benefits. After the Appellate Court reversed, the Supreme Court reinstated the Commission's decision and found the Appellate Court erred in attempting to fashion a broader "indirect proof" test for causation in place of the statutory standard in order to address the risk associated with patients carrying an *undetected* virus. The Supreme Court held we must adhere to the statutory standard for causation set forth in §1(d) of the Act. The Supreme Court further held the Commission's decision was not contrary to the manifest weight of the evidence because the claimant "did not offer any evidence that she had contact with a carrier of hepatitis B." *Id.* at 422.

Like the *Sperling* case, there was no evidence that Garcia came into contact with any workers infected with the Covid virus. Per the un rebutted testimony of Ms. Ceh, Garcia was the only known worker at this location who contracted the Covid-19 virus from June through July 14, 2020.

Furthermore, Petitioner did not present any medical opinion evidence in this case. The only medical opinion evidence was provided by Respondent's Section 12 physician, Dr. Leonard Go, who explained that evidence of known contacts with infected individuals furnishes the primary evidence of exposure and causation. Dr. Go noted that in the absence of known contacts, the risks of exposure may be weighed by other factors such as number of persons present and ventilation. Dr. Go further explained that the "setting" in which the employee worked was more probative than the nature of the job. By way of example, Dr. Go explained that a janitor working in a hospital was at higher risk than a janitor working in a sparsely populated workplace. Given the absence of any known Covid infections among workers at the UPS facility, Dr. Go opined there was insufficient evidence with which anyone could determine causal connection.

As there is no medical opinion evidence supporting Petitioner's claim, the outcome must then turn on whether Petitioner presented sufficient circumstantial evidence showing a causal connection. "[C]ircumstantial evidence can only support an inference which is reasonable and probable, not merely possible." *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799 (2006). "Where the evidence allows for the inference of the non-existence 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." *First Cash Financial Servs.*, 367 Ill. App. 3d at 106. See also *Baldwin vs. Ill. Workers' Comp. Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151 (2011), where claimant's theory that she tracked moisture onto her shoes in a walk-in freezer was properly rejected as conjecture because "more than a mere possibility" must be shown for a reasonable inference to be drawn. Where there are multiple possible alternative causes, determining causation is an exercise in speculation and conjecture unless the evidence points to one of those causes as being probable. See *Pelletier vs. Indian Prairie School Dist.*, 2010 Ill. Wrk. Comp. LEXIS 898 ("While any of these causes is possible, *we find none of them to be probable*, and the Arbitrator's conclusions to be speculative.") (Emphasis added), *aff'd*, *Pelletier vs. Ill. Workers' Comp. Comm'n*, 2012 IL App (2d) 110520WC-U, P10. Where the evidence is evenly balanced, the burden of proof has not been met. See *Canas vs. Rochelle Foods, LLC*, 13 IWCC 860, 2013 Ill. Wrk. Comp. LEXIS 970, ("However, this Arbitrator is to determine the case by the preponderance of the evidence i.e. the balance of said evidence sometimes deemed that 51% tipping point.") See also *Raiber vs. Weinschneider*, 2025 IL App (1st) 221531-U, P39 ("If the evidence was *evenly balanced* as to whether the loans were business loans, then Raiber failed to meet his burden of proof by a preponderance of the evidence.") (Emphasis added.)

Here, there is no credible circumstantial evidence in the record from which it can be reasonably inferred that Garcia's workplace was the source of the exposure. In fact, although it is not Respondent's burden to prove a non-work related source was the cause, the record is replete with evidence of additional sources. On June 29, 2020, the decedent visited the Northshore Community Healthcare Clinic for follow-up concerning his treatment of cellulitis. That visit qualifies as a potential alternate source as the clinic visit fell within the 14-day incubation period

for the Covid-19 virus using either the July 7 or July 10 symptom onset dates. Second, Petitioner herself tested positive for Covid the same day her husband tested positive. Though Petitioner was asymptomatic, it is equally possible that Petitioner could have passed on the virus to Garcia. Among the three potential sources of exposure, hospital clinic, spouse, or employment location, there is no credible evidentiary basis to say that the workplace was more likely the source than the other two potential sources. In determining whether a claimant has met her burden of proof, we are required to assess the totality of the evidence and determine whether the claimant proved it more probably true than not true that the employment caused Garcia's Covid disease. *Baggett vs. Industrial Comm'n*, 201 Ill. 2d 187, 202, 775 N.E.2d 908 (2002). In fact, per the opinion testimony of Dr. Go, who noted a janitor working in a hospital would have a greater risk of exposure to Covid-19 compared to a janitor working in a sparsely populated building, the visit to the medical clinic posed a higher risk than Garcia's place of employment as would Garcia's home, a location with a known infected spouse.

The Decision of the Arbitrator states the employment location was more likely the source of exposure because first, Garcia worked 40 hours a week, and second, Garcia was exposed to numerous amounts of people "whether they were employees (sic) of UPS, ABM or the public." These findings are not supported by the record. Petitioner testified Garcia worked with only a co-worker and a supervisor. Ms. Ceh testified that there were no more than 10-12 workers during Petitioner's shift, and probably even less as Garcia's shift began at 2:00 p.m. and ended at 10:00 p.m. There were security guards at the entrances but it is unclear from the record how many Petitioner encountered. Moreover, there is no evidence Petitioner worked with the general public. In fact, Ms. Ceh testified Garcia did not work with the public as the warehouse distribution center and office were not open to the public. Thus, this finding relied upon to determine compensability, is unsupported by the record before us.

The decision further states decedent's job in and of itself made him more susceptible to this exposure because he was the one cleaning and disinfecting areas to prevent the illness. However, this, too, has no support in the record. There is no medical or epidemiological opinion suggesting a janitor would be more likely to contract Covid-19 due to his job duties. In fact, Dr. Go testified a janitor working in a hospital has a higher risk than a janitor working in a sparsely populated warehouse. The more salient factor to determine causality, per Dr. Go, is known contacts with infected individuals.

The decision further relies on Petitioner's and Ms. Goll's testimony that Garcia did not travel, attend social gatherings or see his adult children. However, Garcia's avoidance of travel, social gatherings, and contact with children is outweighed by the medical records showing Garcia visited a healthcare clinic on June 23 and June 29, 2020, where, it may reasonably be inferred, he may have come into contact with infected individuals seeking medical attention for the virus at that time.

Finally, the Arbitrator found, "Respondent did not produce persuasive evidence that Decedent contracted the COVID-19 virus outside work..." I disagree that it is Respondent's burden to prove Garcia contracted the virus outside of work once the presumption has been rebutted. It is Petitioner's burden to prove all elements of her claim. That being said, certainly, a

health care clinic is a location where one could contract the Covid virus. This is a crucial piece of evidence that was not addressed in the decision.

Based on the totality of the evidence and the applicable law, I would find Petitioner failed to prove a compensable claim. Petitioner did not prove the decedent worked in a location with over 15 people at the time of the exposure and thus Petitioner was not entitled to the presumption of compensability. Even if Petitioner was entitled to the presumption, Respondent provided “some” evidence to rebut the presumption, namely evidence they implemented and enforced health and safety regulations as well as evidence of alternate sources of exposure, i.e., visits to the health clinic within 14 days of the onset of symptoms, and his spouse who tested positive on the same day as Garcia. Finally, Petitioner failed to meet her burden to show the contraction of the virus had its origin in a risk connected with the employment and flowed from that source as a rational consequence. Like the *Sperling* case, there was no evidence that Garcia came into contact with any workers infected with the Covid virus. Inferring causation must be based on more than mere possibility, it must be shown that the employment was more probably than not the source of exposure. On this record, Petitioner has not met this burden and the decision should be reversed.

For the above reasons, I dissent from the majority’s opinion and would reverse the Arbitrator’s Decision.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

June 18, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009505
Case Name	Teresa Perez (On Behalf of Husband Guillermo Garcia) v. ABM Industry Group, LLC & RAF
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Lorena Hernandez
Respondent Attorney	Christopher Jarchow

DATE FILED: 9/26/2025

*/s/Efi James, Arbitrator*_____
Signature**INTEREST RATE WEEK OF SEPTEMBER 23 2025 3.71%**

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**

Teresa Perez on Behalf of Deceased Husband Guillermo Garcia

Employee/Decedent

Case # **21** WC **009505**

v.

ABM Industry Group, LLC., and Illinois State Treasurer as Ex-Officio Custodian of the Rate Adjustment 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 **Efi James**, Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Decedent's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Decedent's current condition of ill-being causally related to the injury?
- G. ☐ What were Decedent's earnings?
- H. ☐ What was Decedent's age at the time of the accident?
- I. ☐ What was Decedent's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
 ☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Section 7(a) death benefits and Section 7(f) burial expenses**

FINDINGS

On **7/10/2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Decedent earned **\$31,200.00**; the average weekly wage was **\$600.00**.

On the date of accident, Decedent was **62** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$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.

Arbitrator finds that Decedent died on 8/17/2020, leaving a surviving spouse, as provided in Section 7(a) of the Act.

ORDER

Respondent shall pay Decedent's spouse, Teresa Perez, TTD benefits for 5 weeks in the amount of \$400.00 for a total amount of \$2,000.00.

Respondent shall pay death benefits beginning on 8/17/2020 at the rate of \$580.90/weekly to the surviving spouse, Teresa Perez, because Decedent's Covid-19 disease caused his death as provided in Section 7 of the Act.

Respondent shall also pay burial expenses, not so exceed \$8,000.00 to the surviving spouse as provided under Section 7(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may be 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.

A handwritten signature in black ink, consisting of a stylized 'E' followed by a long horizontal stroke that curves slightly upwards at the end.

Signature of Arbitrator

SEPTEMBER 26 2025

OF THE STATE OF ILLINOIS

Teresa Perez, on behalf of deceased husband	)	
Guillermo Garcia	)	
Decedent,	)	
	)	No. 21 WC 009505
v.	)	
	)	Arbitrator Efi Poziopoulos James
ABM Industry Group, LLC.,	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on June 6, 2025, in Chicago, Illinois before Arbitrator Efi Poziopoulos James on Petitioner's Petition for Immediate Hearing. Issues in dispute include Accident, Causal Connection, TTD, Nature and Extent and Death Benefits. (Arbitrator's Exhibit "AX" 1)

Job Duties

Teresa Perez (hereinafter "Petitioner") testified at trial as the surviving spouse of Guillermo Garcia (hereinafter "Decedent"). (Tr. 17) Decedent was employed by ABM Industries, a janitorial staffing company that assigned him to perform cleaning services at a UPS facility. (Tr. 18-19) Petitioner had also worked for ABM prior to 2020 and described ABM's practice of assigning workers to various locations to clean restrooms, dust, sweep, mop and remove trash. (Tr. 18-20) She stated that Decedent's work duties were just like those that she performed as she also worked for the same company but had stopped working some months before. Petitioner further stated that her understanding of Decedent's workplace was limited to what he told her – she had never been to the UPS location, did not know its address, and only knew her husband worked with two other people which consisted of another janitor and a supervisor. (Tr. 20, 31-32) She confirmed that Decedent had contact with others while cleaning bathrooms and that ABM provided him with a face mask and thin rubber gloves that easily tore, which he replaced when needed. (Tr. 32-33) Petitioner was unsure whether Decedent had access to hand sanitizer while at work. (Tr. 34)

Petitioner noted that Decedent would also clean the bathrooms while they were in use by other employees. (Tr. 21) She observed that Decedent left for work wearing a mask, but he was not provided with any other noticeable protective equipment beyond gloves. (Tr. 21)

Decedent's Prior Medical Condition

Ms. Perez testified that Decedent suffered from diabetes and a fatty liver but that neither of these conditions interfered with his work. (Tr. 21-22) She also testified that Decedent had regular diabetes checkups every three months and had last seen his doctor about three months before July 2020. (Tr. 34)

Trial Testimony

Testimony of Teresa Perez and Decedent's Medical Treatment

Petitioner testified that she and Decedent had been married for 42 years and had three adult children who were not living with them at the time of his illness in July 2020. (Tr. 17-18) She testified that no other individuals lived in their apartment at that time. (Tr. 18) Regarding lifestyle, she stated that Decedent did not go anywhere except work due to the pandemic and spent time at home watching movies. (Tr. 34-35) Petitioner testified that she also did not leave the home and spent time embroidering. (Tr. 35) Petitioner confirmed again that no one visited their apartment in the two weeks prior to July 10, 2020, and none of their children tested positive during that time (Tr. 34-35)

Petitioner testified that Decedent began feeling ill approximately one week before his July 14, 2020 ER visit, experiencing muscle pain, chills, and a persistent cough with phlegm. (Tr. 22) He did not report these symptoms to his employer, ABM, because he did not want to miss work. (Tr. 22) His final day at work was July 13, 2020, during which he was sent home early by a supervisor due to an uncontrolled coughing episode. (Tr. 22-23) The following day, during his diabetes check-up, Decedent tested positive for COVID-19 and was transferred to the ER at Evanston Hospital. (Tr. 24) Evanston Hospital records reveal that Decedent presented with a cough and yellow phlegm that began three days prior. (PX 1, pg. 12) The records detail that he ambulated to his doctor's appointment on July 14th at the resident clinic and was brought to the emergency department because of difficulty breathing. (PX 1, pg. 12) The records state that he denied travel history outside of Illinois in the last month and denied known Covid contacts in the past 14 days. (PX 1, pg. 12) Decedent was diagnosed with Covid-19 pneumonia, new onset asthma, new onset COPD, pulmonary emboli, pleural effusion and congestive heart failure (CHF). (PX 1, pg. 16) The records also indicate that Decedent lived at home with his wife who was healthy and had no symptoms. (PX 1, pg. 24) The records also note that Decedent worked as a janitor at UPS stores where he was incidentally exposed to many people. (PX 1, pg. 24) Decedent again denied any recent travel history. (PX 1, pg. 24) On July 25, 2020, a repeat Xray of the chest revealed worsening aeration with increasing interstitial and alveolar opacities concerning for infectious/inflammatory process and stable cardiomegaly with vascular engorgement with low lung volumes.

On July 31, 2020, Decedent was intubated. (PX 1, pg. 76) However, on August 17, 2020, when Decedent's condition significantly worsened, his family made the decision to withdraw care and proceed with extubation. (PX 1, pg. 947) Decedent was pronounced dead shortly thereafter. (PX 1, pg. 947) The Cook County Certificate of Death listed Decedent's cause of death as pneumonia due to a Covid-19 infection. (PX 2)

Petitioner testified that she also tested positive for COVID-19 on July 14, 2020, when Decedent was admitted to the hospital, but reiterated that she was asymptomatic. (Tr. 24-25) She took the test on her own after being told at the hospital to assume she might be infected. (Tr. 25) She followed instructions to isolate in her apartment. (Tr. 31)

Petitioner further testified that neither she nor Decedent had traveled, attended social gatherings, or gone grocery shopping during the first 2 weeks of July 2020, and that their children delivered groceries and left them at the door without entering the apartment. (Tr. 25-27) Petitioner stated that she had no contact with neighbors and could not communicate with them due to language barriers. (Tr. 25) She testified that no one else visited their home in the weeks before Decedent became sick, and that no relatives or children had tested positive for COVID-19 around that time. (Tr. 26-27) She stated that both she and Decedent took precautions including handwashing, showering upon returning home, and washing clothes immediately after work. (Tr. 27) Ms. Perez described the emotional impact of Decedent's death as extremely painful and stated her life had completely changed due to his passing. (Tr. 28-29)

Testimony of Teresa Goll

Teresa Goll, the daughter of the Decedent, Guillermo Garcia, testified that she did not reside with her parents at the time her father became ill in July 2020. (Tr. 37) She also testified she has two brothers, neither of whom lived with their parents during that period. (Tr. 37-38) Ms. Goll explained that she and her siblings avoided physical contact with their parents due to concerns over COVID-19. (Tr. 38) Instead, they delivered groceries and essential items to their parents' apartment once or twice per week, leaving the items at the back steps and calling to notify them, with only distant visual contact, such as waving, but never entered the home. (Tr. 38-39) These precautions were taken out of concern for both parents' underlying medical conditions and public health guidance at the time. (Tr. 39) Ms. Goll testified that to her knowledge, her parents did not leave their home for any reason other than her father's work, nor did they attend social gatherings or have visitors during this period. (Tr. 39-40) She confirmed that although her mother and father tested positive for COVID-19 on July 14, 2020, neither she nor her brothers ever tested positive or exhibited symptoms during that time at any time in the remainder of 2020. (Tr. 40-41) When asked about the impact of her father's passing, Ms. Goll testified regarding the emotional toll of not being able to see him in person before his death and the lasting pain of only having seen him via video in his final days. (Tr. 41) She also testified to the emotional pain of losing her father despite having taken every precaution to keep her parents safe. (Tr. 41)

Testimony of Rodica Ceh

Rodica Ceh, the Operations Manager for ABM Industry, testified that she had been with the company for 31 years and in her current role for 18 years. (Tr. 43-44) ABM is a commercial janitorial services company, and in July 2020, she was responsible for staffing, supplies, equipment, and operational management at various accounts, including the UPS facility in Elk Grove Village, Illinois. (Tr. 44-47) She stated that ABM has an estimated total of 140,000-120,000 employees. (Tr. 69) She was directly responsible for supervising Decedent, who was transferred to the Elk Grove UPS office area in June 2020 as a janitor. (Tr. 47) Ms. Ceh testified the UPS facility where he worked was a warehouse of about 100,000 square feet. The facility also had a 20,000 square foot office facility. Ms. Ceh testified that Decedent was assigned to work in the office area. (Tr. 46) She testified that he worked his shift typically in an area occupied by 10-UPS employees. (Tr. 47) She further testified that Decedent's work schedule was 2:00 p.m. to 10:00 p.m., Monday through Friday, and he did not work overtime. (Tr. 64-65) His cleaning duties included offices and restrooms, some of which were occupied during his shifts, and the office space consisted of low cubicle partitions. (Tr. 65-66) She described Decedent as a reliable employee who showed up to work. (Tr. 67)

Ms. Ceh testified that ABM implemented numerous COVID-19 safety protocols by mid-2020, including training employees, distributing personal protection equipment (PPE) such as surgical masks, gloves, and hand sanitizer. (Tr. 48-50) Ms. Ceh testified that Decedent's job at ABM did not require interaction with the general public. Members of the general public were not permitted into the facility where Decedent worked. (Tr. 47) Ms. Ceh testified that the UPS facility was manned by security personnel who insured that any individual entering the facility was wearing a face mask. (Tr. 48) Ms. Ceh testified that COVID-19 trainings were generally conducted indoors in small groups (4-5 people) in break areas. (Tr. 64) Ms. Ceh testified that these meetings included discussions on safety as it related to COVID-19. Ms. Ceh testified that Decedent attended those meetings. (Tr. 44-45)

Ms. Ceh testified that Decedent signed a face mask acknowledgement which was contained in his personnel file. (Tr. 51-52) This document was in English. (RX 4) She also testified there was signage on how to use a face mask. (Tr. 52) Ms. Ceh also stated that employees were advised to social distance a minimum of six feet and to not gather and eat at the same time for breaks and when using the restroom. (Tr. 53-54) Respondent submitted a "Moment of Safety" document which Ms. Ceh testified was presented to the employees. (RX 6, Tr. 55) Ms. Ceh noted that if an employee showed symptoms or tested positive, they were instructed to stay home and report to their supervisor. (Tr. 55) Ms. Ceh testified that employees were given a copy of a "Moment for Safety" memo regarding staying home if you're sick and another indicating employees to wash their hands. (Tr. 56-58) She testified that these memos were given to Decedent. (Tr. 58) Ms. Ceh stated that all ABM materials were

translated into Spanish and distributed to employees, including Decedent. (Tr. 69) Ms. Ceh testified that there were no temperature screenings conducted in July 2020. (Tr. 66) UPS had its own social distancing and PPE protocols, and their employees were also required to report positive COVID-19 tests, which triggered enhanced cleaning by ABM. (Tr. 69-71)

Ms. Ceh testified that on July 13, 2020, she was notified by facility security that Decedent appeared visibly ill and was denied entry before reaching the work area. (Tr. 61) He exhibited symptoms such as sweating, disorientation, and shortness of breath. (Tr. 61) Decedent did not enter the facility that day. (Tr. 62) She noted that no COVID-19 cases were reported at the Elk Grove facility among ABM or UPS employees prior to Decedent's illness but that one UPS case was reported shortly afterward. (Tr. 71-72)

Ms. Ceh testified that OSHA conducted an investigation as to Decedent's passing. Ms. Ceh testified that OSHA determined that COVID-19 regulations were being followed in the Elk Grove UPS facility. Ms. Ceh testified that OSHA did not discover any COVID-19 violations. (Tr. 62)

Respondent's Medical Record Review by Dr. Leonard Go on June 28, 2023 and deposition testimony taken on December 16, 2024

The evidence deposition of Dr. Leonard Go took place on December 16, 2024. (RX 2) Respondent initially retained Dr. Go to author a Medical Record Review dated June 28, 2023. (RX 3) Dr. Go reviewed medical records related to Decedent's hospitalization at Evanston Hospital from July 14, 2020 to August 17, 2020, which included imaging studies, a death certificate, and a cover letter from counsel. (RX 2). He noted the most relevant imaging included a chest x-ray dated July 14, 2020, and CT scans from July 30 and August 6th. (RX 2) Dr. Go also testified that the death certificate listed the immediate cause of death as pneumonia due to COVID-19, with contributing conditions including hypertension, diabetes, non-alcoholic steatohepatitis with cirrhosis, and obesity. (RX 2) Based on his review of the records, Dr. Go diagnosed Mr. Garcia with COVID-19 infection, pneumonia, acute hypoxemic respiratory failure, and acute respiratory distress syndrome during the period of hospitalization. (RX 2) He stated he could not reach an opinion regarding whether the COVID-19 infection or resulting pneumonia and death were causally related to Mr. Garcia's work due to insufficient evidence. (RX 2)

Dr. Go testified that determining work-related COVID-19 requires information about potential sick contacts, exposure duration and intensity, and environmental factors such as workplace ventilation and overcrowding. (RX 2) Dr. Go also testified that understanding the exposure history would also help determine where the exposure occurred. (RX 2) Dr. Go further testified that his understanding of Decedent's job duties were limited to the description provided by counsel. (RX 2) He believed Decedent was a janitor who was designated to clean at a UPS facility and performed "advanced cleaning" with a hospital grade janitor. (RX 2) Dr Go was under the impression that Decedent worked by himself, he was not aware of Respondent's protocol regarding Covid-19, nor was he aware of any information regarding the UPS facility that Decedent worked at. (RX 2)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e) Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his 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 Decedent 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 Mrs. Teresa Perez during the hearing and finds her to be a credible witness. Decedent, through the testimony of all the witnesses, came across as a hard-working individual. The Arbitrator finds Petitioner's testimony as well as the testimony of her daughter, Teresa Goll, to be straight forward and truthful. The Arbitrator did not find any material contradictions or internal inconsistencies that would deem the witnesses unreliable specifically as it relates to the description of the events at home and at work leading up to the death of Decedent, Guillermo Garcia.

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Issue C, whether the accident arose out of and in the course of Decedent's employment by Respondent, the Arbitrator finds as follows:

It is well-established that a Petitioner is required to prove by a preponderance of the evidence all elements of his claim, including whether there was an accidental exposure arising out of and in the course of Decedent's employment on or before July 10, 2020, and whether that alleged exposure is the cause of his COVID-19 illness and subsequent death.

The Occupational Disease Act ("ODA") provides benefits for employees who establish that they have contracted an occupational disease while working. An "occupational disease" is a disease arising out of and the course of employment which has become aggravated and rendered disabling as a result of the exposure at employment. Such aggravation must arise out of a risk "peculiar to or increased by employment and not common to the general public."

On June 5, 2020, the Illinois Legislature amended the ODA to provide benefits for certain class of workers who may have contracted COVID-19 at the workplace. The COVID-19 amendment is contained in paragraph 1(g) of the Act. Section 1(g) creates a rebuttable presumption in favor compensability for certain "first responders and frontline workers" who contract COVID-19.

The COVID-19 presumption provides that any such worker that develops any injury or occupational disease that resulted from the exposure to a contraction of COVID-19, "the exposure and contraction shall be rebuttably presumed to have arisen out of and in the course of the employee's ... employment." Simply stated, exposure and contraction are presumed to have arisen from the work environment and the occupational disease is presumed to be causally connected to the hazards or exposures of employment. As such, the presumption creates a prima facie case that the injury arose out of and in the course of employment. If not rebutted, the worker wins and is entitled to benefits afforded under the ODA. If rebutted, Petitioner loses the benefits of the presumption and must prove his case in same manner as required under the ODA.

On March 21, 2020, an Executive Order issued by Illinois Governor Pritzker issued an Executive Order that went into effect essentially shuttering all business in Illinois and recommending all persons stay at home and to the extent possible, work from home unless employed as a first responder, medical provider or with an “essential business.”

Employees of the essential business may enjoy a rebuttable presumption of compensability as long as the claimant is required to encounter members the general public or work in employment locations of more than 15 employees. The rebuttable presumption applies to all cases in which a COVID-19 diagnosis was made on or after March 9, 2020 through December 31, 2020.

This COVID-19 presumption was enacted on June 5, 2020 and applied retroactively to cases filed by qualified workers who contracted COVID-19 between March 9, 2020 and through a sunset date of December 31, 2020. The presumption was later extended through June 30, 2021. The presumption applies to qualified workers who were diagnosed between March 9, 2020, and June 30, 2021. For cases occurring on or before June 15, 2020, a worker must provide either confirmed by a licensee medical practitioner medical or a positive laboratory test. For cases occurring on or after June 15, 2020, a positive laboratory test is required.

The COVID-19 presumption is an ordinary presumption. The employer need only introduce “some evidence” that the employee’s occupation was not the cause of the injury or disease. The legislation creates a rebuttable presumption similar to the rebuttable presumption that already exists within the Illinois Occupational Disease Act. The COVID-19 Amendment to the Illinois Workers’ Occupational Diseases employs established precedent found in the in *Kevin Johnston v. Illinois Workers’ Compensation Commission* to support the addition of this Act. In *Johnston*, the Appellate court found in order to rebut the presumption, “some evidence sufficient to support a finding that something other than the claimant’s occupation caused his condition” is sufficient. In that event, the presumption will cease to operate, and the issue will be determined on the basis of evidence admitted at trial as if the presumption never existed. The presumption merely shifts the burden of production, not the burden of persuasion. It operates in the employee’s favor only if the employer provides no evidence to rebut causation.

An employer may rebut the presumption by:

1. Showing that the claimant worked from home or was off work in the 14 days prior to diagnosis.
2. Demonstrating that it complied with recommended CDC or Illinois Public Health guidelines in the 14 days prior to the diagnosis (including sanitation, masks, other protective gear, barriers, social distancing, etc.); or
3. Presenting some evidence that the claimant contracted the virus somewhere else.

Once the presumption is rebutted, Petitioner will have to establish, by a preponderance of the evidence, that the COVID-19 disease was contracted at work.

First, it must be determined whether Respondent, ABM Industries, is an essential business that would have been subject to the rebuttable presumption. The Arbitrator takes Judicial Notice of Executive Order 2020-10 (Covid 19 Executive Order No. 8), issued March 20, 2020 and in effect as of March 21, 2020 lists a number of businesses deemed “essential” including “critical trades” listed as: Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and ***janitorial staff for commercial and governmental properties***, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations. It is clear from the testimony of Respondent’s own witness, Rodica Ceh, the

Operations Manager for ABM Industry that Respondent ABM, an essential business, was operating a commercial janitorial services company, and as such, Decedent was an essential worker.

Second, it must be established that Decedent was required by his employment to encounter members of the general public or work with more than 15 employees. Decedent, while performing his job duties was exposed to both. Ms. Ceh testified that Decedent's duties included cleaning the office area, vacuuming, cleaning and disinfecting restrooms and sweeping and mopping floors. She testified that the offices Decedent cleaned were sometimes occupied by UPS employees but that he would also encounter anybody in the UPS facility while cleaning the bathrooms. There is sufficient evidence for the Arbitrator to conclude that Decedent was therefore not only exposed to those people in the entire facility which might use the bathroom, but he was also exposed to UPS employees and ABM employees as well as "several" security personnel, as testified to by both Petitioner and Ms. Ceh, all of which the Arbitrator finds total more than 15 individuals.

The Arbitrator finds that ABM Industry was an essential business and therefore, Decedent was an essential worker pursuant to Executive Order 2020-10. The Arbitrator also finds that Decedent was required by his employment to encounter members of the general public or work with more than 15 employees. The Arbitrator therefore concludes that Decedent was subject to the rebuttable presumption.

Respondent must now rebut the presumption of compensability. First, Respondent did not provide any evidence that Decedent was on leave or working from home for a period of 14 or more consecutive days immediately prior to Decedent becoming ill.

Second, Respondent failed to prove that it was applying to the fullest extent possible or enforcing to the best of its ability, workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the CDC. Ms. Ceh testified that Decedent was either given or shown numerous memorandums labeled "Moment of Safety" that were neither in Spanish nor signed by Decedent. (Tr. 55-58) The only signed document introduced into evidence was a signed document which was in English regarding face coverings. (RX 4) Additionally, Ms. Ceh testified that PPE materials such as face masks, gloves and hand sanitizers were distributed to the employees, but Ms. Perez testified that these gloves were of poor quality which would tear easily. (Tr. 48-50, 32-33) Ms. Garcia was also unable to confirm that Decedent ever received hand sanitizer. Additionally, Ms. Ceh confirmed that Respondent was not conducting temperature screenings which would have alerted them of a sick employee. (Tr. 66)

Third, Respondent failed to prove that Decedent was exposed to COVID-19 by another source. Decedent worked 40 hours per week on-site as a janitor at a UPS facility and did not frequent any location other than his workplace. Both his wife and daughter credibly testified that neither they nor Decedent traveled outside the country, attended gatherings, or had any known contact with infected individuals. The family adhered strictly to safety protocols; the children delivered groceries to the doorstep and did not enter the home, minimizing all outside interaction. There is no evidence of any alternative source of COVID-19 exposure outside of Decedent's workplace where he spent 8 hours a day. In addition, Ms. Ceh testified that shortly after Decedent became ill, a UPS employee was also found to have COVID-19. Accordingly, Respondent has failed to meet its burden to rebut the presumption under the Illinois Occupational Diseases Act.

Even if Respondent were able to overcome the rebuttable presumption under 820 ILCS 310 1/(g), the Arbitrator finds that the preponderance of the credible testimony and documentary evidence still supports the conclusion that Decedent contracted COVID-19 in the course of his employment. It was established that Decedent spent an average of 40 hours a week at Respondent, being exposed to numerous amounts of people. Whether they were employees of UPS, ABM or the public. Decedent's job, in it of itself, made him more susceptible to this exposure as he was the one cleaning and disinfecting areas to prevent the spread of illnesses like COVID-19. In addition, Ms. Perez and Ms. Goll both testified that Decedent did not travel, did not attend social gatherings,

and refrained from seeing his children, with the goal of keeping himself healthy. Taken together, this evidence establishes that, independent of the statutory presumption, it is more likely than not that Decedent's infection arose out of and in the course of his employment.

Based upon the evidence presented and the record as a whole, the Arbitrator finds that Respondent rebutted the COVID-19 ODA presumption. It did so because it produced some evidence to rebut the presumption. Respondent attempted to introduce evidence to negate Decedent's work exposure of the COVID-19 virus. It could not and did not. Respondent did not produce persuasive evidence that Decedent contracted the COVID-19 virus outside work and clearly not enough evidence to negate Decedent's work related COVID-19 virus exposure.

The Arbitrator finds that the Respondent's efforts to prevent employee exposure were admirable and well-intended, but the Arbitrator finds that it is more likely than not, more probable than not, that Decedent contracted the COVID-19 virus at work and not by one of his family members or the community. Having found that Decedent's COVID-19 claim should be adjudicated under the ODA, and after considering the entire record, the Arbitrator concludes that Decedent has proven by a preponderance of the evidence that his contracted COVID-19 resulted from his exposure to the virus at work. Therefore, the Arbitrator concludes that Decedent's exposure to the COVID-19 virus arose out of and in the course of his employment with the Respondent.

Issue F, whether Decedent'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. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Thus, 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. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937, 297 Ill. Dec. 486 (2005).

A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181, 457 N.E.2d 1222, 75 Ill. Dec. 663 (1983); see also *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266, 418 N.E.2d 722, 49 Ill. Dec. 702 (1981); *Swartz*, 359 Ill.App.3d at 108.

The issue of causation, including whether an accident aggravated or accelerated a preexisting condition, is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999).

Petitioner established that there is a causal connection between Decedent's work-related exposure and his COVID-19 diagnosis which led to his death. Decedent worked full-time as a janitor at a UPS facility during the height of the COVID-19 pandemic, performing essential cleaning tasks in a large, occupied warehouse environment. He was not working remotely or on leave, and had no known exposures outside of work, as confirmed by the credible testimony of his wife and daughter, who stated that the family remained isolated, did not leave the home, and received groceries delivered to their doorstep by their children. Medical records from Evanston Hospital similarly corroborate Decedent's history where he denied travel and denied any known

COVID-19 contacts. The records also support that Decedent was a janitor at a UPS store where he was exposed to many people. There is no alternative source of exposure and considering his continued on-site employment in a high-traffic facility, 8 hours a day, the only logical inference is that Decedent's illness is causally connected to his employment. Although Respondent points to Dr. Leonard Go's medical record review, as evidence of a lack of causal connection, Dr. Go's primary reasoning was that he had insufficient evidence to make that determination. His opinion was based on the minimal information provided by Respondent. Therefore, the Arbitrator finds that Decedent established causation by a preponderance of the evidence.

Issue K, whether Decedent is entitled to TTD benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether he 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, the claimant 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 that Decedent's COVID-19 infection arose out of an in the course of his employment and that his death is causally related to this exposure, Respondent is responsible for the TTD owed while in the hospital. Respondent is to pay Petitioner TTD benefits from 7/14/20-8/17/20 for a total of 5 weeks of benefits.

Issue L, the nature and extent of the injury and the issue of (O), Section 7(a) death benefits and Section 7(f) burial expenses, the Arbitrator makes the following finding of law: , the Arbitrator finds as follows:

Having found that Decedent's diagnosis of COVID-19 which led to his death is causally related and arose out of and in the course of his employment, the Arbitrator orders Respondent to pay death benefits under Section 7(a) and associated burial expenses. This amounts to \$400.00 weekly for 25 years to the surviving spouse, Teresa Perez. Respondent is further ordered to pay burial expenses not to exceed \$8,000.00

It is so ordered.



Arbitrator Efi Pozziopoulos Jame

SEPTEMBER 26 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC013098
Case Name	Justin Maze v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0186
Number of Pages of Decision	31
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 6/22/2026

/s/ Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Justin Maze,

Petitioner,

vs.

NO: 24 WC 13098

State of Illinois - Pinckneyville,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering accident, notice, causal connection, medical expenses, prospective medical care, temporary total disability, and permanent partial disability, and after being advised of the facts and law, reverses the Decision of the Arbitrator.

Findings of Fact

Petitioner's Testimony

Petitioner testified he worked for the City of Marion as a laborer for the water department from 2014 to September 2015. T.13-15. He was then employed at Menard Correctional Center from September 2015 to July 2021. He began his work there as a correctional officer and worked his way up to sergeant and then to lieutenant. In July 2021, he transferred to Pinckneyville Correctional Center. He was promoted to shift supervisor in December 2021. He continued to work there until June 2023, when he transferred to Murphysboro Life Skills Re-Entry Center, which was a subsidiary of Pinckneyville Correctional Center. Petitioner worked there from June of 2023 until March 13, 2025. At the time of the July 8, 2025 arbitration hearing, Petitioner testified to being employed by Allied Security since April 2025. T.12.

When Petitioner worked at Menard Correctional Center as a correctional officer, his duties included bar rapping, using Folger Adams keys on the cell doors, and keying chuckholes daily. T.15-17. He estimated he was keying doors and chuckholes approximately 30 to 60 times per day. T.16-17. He testified that the locks were very antiquated and heavy. T.17. When pushing on the door, they would "get jammed up" and he would have to try to key them open to slide it in order to shut it all the way. Petitioner testified to being left-handed.

When Petitioner was promoted to correctional sergeant and range sergeant in the training center in 2018, his duties were similar to that of a correctional officer. T.17, 36. He still opened cell doors and when there was a lockdown, he helped and assisted in carrying trays, which in the east or west house covered five sets of stairs. Petitioner testified lockdowns were prevalent at that time.

In May of 2019, he was promoted to correctional lieutenant. T.36. Petitioner testified that when he was promoted to lieutenant his duties were again similar. T.18. There was more involvement in supervising the staff below, but he still assisted in opening doors. He did not bar rap at that time. He was required to type up tickets or help staff type up tickets whenever there were infractions at Menard, which he testified was several times per week.

After six years at Menard, Petitioner transferred to Pinckneyville Correctional Center as a correctional lieutenant in 2021. T.19, 38. While in that position, he supervised zones. T.19. He testified they had a control pod that operated the doors, but there would be times that he had to key the gates open. *Id.* He testified that he was not a lieutenant there for long. T.19.

Once promoted to shift supervisor, his duties were primarily administrative, he prepared rosters and typed up shift reports, overtime reports, reportables, and incident summaries. T.19-20. During his shift, he performed a tour of every single cell house. He testified that during this daily tour, he might have opened gates. T.20. He described his work at Pinckneyville Correctional Center as hand intensive, with the most hand intensive activities being typing and filling out the reports and rosters. He testified the time he spent on these activities would vary on a daily basis. On a low day, he would spend two to three hours performing these activities. On a high day, if there were emergency med furloughs, court writs or other things of that nature, it could be six to eight hours. T.21. He testified the doors and locks at Pinckneyville were much better than at Menard and he did not recall having any trouble with them.

When Petitioner transferred to Murphysboro Life Skill Re-Entry Center as a shift supervisor, his duties were the same as when he was at Pinckneyville. T.22. They included filling out rosters, shift reports, reportables, lockdown reports, and incident summaries. If he did tours on the dorms, he would key them open. He agreed he did not use Folger Adams keys at Murphysboro. T.40. When he went around to inspect supply closets, he would open the doors. T.22. He testified he would do that once per shift, as he made his rounds and inspected everything. He testified that typing frequency was the same as at Pinckneyville.

On cross examination, Petitioner testified that that he had keyed doors, opened doors and bar rapped, but agreed the job duties varied. T.39. He testified that the duties themselves were consistent, but how many times they were performed a day varied. He agreed there was intermittent rest between his different job duties.

While working at Murphysboro and Pinckneyville, he also worked for the Williamson County Clerk's office. T.23. He became the Circuit Clerk in 2021. He took a leave of absence from Pinckneyville Correctional Center from January to June of 2021. In July, he transferred back to Pinckneyville. He testified that while working as the Circuit Clerk, he was acting as a human

resources representative. He managed personnel and met with judges and attorneys. T.23-24. He testified that he would spend about an hour to an hour and a half a day at most typing. T.24. The hours he spent at the clerk's office ranged from 25-40 hours a week. This was while he was working for the Illinois Department of Corrections, excluding his leave of absence. While working as the Circuit Clerk, he was working a 37 ½ hour work week with the Department of Corrections, noting that with an hour shift prep, it was basically like working 42 ½ hours a week. T.25.

During the course of his employment with the Department of Corrections, he began to notice symptoms in his hands and arms, including tingling in his fingers, numbness, and locking up of his elbows. He testified he would also drop things. He first started noticing the symptoms around 2017-2018 and they just progressively got worse. T.25-26. Petitioner denied seeing any doctor for his symptoms prior to seeing Dr. Bradley on April 15, 2024. T.26. He testified he had never been told that his symptoms or anything related to his hands or arms were related to his job duties prior to that date.

On April 15, 2024, Petitioner saw Dr. Bradley for an evaluation of his hands and arms. PX3. Petitioner filled out an intake/registration form prior to his evaluation with Dr. Bradley. T.41-42; PX3, p.2. Petitioner testified he explained his symptoms and discussed his employment history with Dr. Bradley. T.27. Dr. Bradley prescribed some hand splints/braces to see if that would help him. Dr. Bradley sent him for an EMG/NCV, which showed he suffered from cubital tunnel syndrome. T.28. Following that testing, Dr. Bradley recommended surgery.

Just prior to surgery, Petitioner's hands were constantly going numb. He testified that in the morning he would have to squeeze his hands back and forth for several minutes trying to get the feeling back. Petitioner testified his elbows would lock up and he would have a burning sensation that would go down his forearm to his fingertips.

Petitioner had surgery to his left upper extremity and then his right upper extremity. Petitioner testified the surgeries helped him. T.29. Petitioner was eventually released maximum medical improvement on July 11, 2024. He did not return to Dr. Bradley after his release.

Petitioner denied any alternate medical risk factors. He denied having any hand intensive hobbies. T.31. He admitted lifting weights but noted that prior to his surgery he did not do it often, as his elbows would lock up and he would drop the weights. After the surgery, he would lift weights two to three times a week.

He testified that he still had numbness on both his elbows. He denied having any activities that aggravated his elbows. He denied taking any medications for his hands and arms.

Petitioner agreed he saw Dr. Patrick Stewart for an examination. T.32. He reviewed Dr. Stewart's report and disagreed with his finding that Petitioner did not need surgery.

Petitioner testified that he had joined the National Guard in 2017, at which time he took a leave of absence from work for the duration of his basic training, but he did not know the exact number of days of his leave. T.35. He testified that if the record reflected it was 140 days, then he would agree it was accurate.

In 2018, he testified he was still in the military and took leaves of absence from work for both drills and annual training, but he did not deploy. T.35-36. He did not know the exact number of days he took, but testified that if the record reflected he took 98 days, he would agree. T.36.

In May of 2019, he was promoted to a lieutenant position in the National Guard. T.36. He testified that while in the National Guard, he was doing typing in his human resources role. T.44.

In 2020, he transitioned from the National Guard to the Marines. When he transitioned into the Marines, he chose to join the infantry, so it was more intensive in terms of rucking, including carrying 100 pounds on his back and hiking long distances. On May 11, 2020, he left for boot camp, coming back in October 2020. T.37. He was again not sure of the exact days of his leave of absence, but agreed that a return date of October 29, 2020 was probably correct. He also agreed he was on a leave of absence from February 15, 2020 through March 18, 2020.

In 2021, he took a leave of absence from January 28, 2021 to June 6, 2021 for his Circuit Court position. Petitioner testified that this was the year he transferred to Pinckneyville Correctional Center. T.38. He did not recall getting another secondary employment approval for his participation as a regional field director in the Jessie Sullivan campaign.

In 2023, Petitioner transferred to Murphysboro. He resigned as Circuit Court Clerk in 2024. When he initially resigned, he publicly announced the resignation was due to being deployed for the military. T.39. He later changed the reason for his resignation, stating it was due to his entrance in a pretrial diversion agreement with the U.S. Attorney's office. He testified he had not been charged with anything. T.33. He had never been arrested and was never convicted. Petitioner testified that even though he was eligible to deploy, he did not deploy as the military determined they would not send him out based upon the diversion in place. T.34.

Jamie Karales' Testimony

Mr. Karales testified that at the time of the hearing, he was employed by Pinckneyville Correctional Center as Assistant Warden of Operations. T.46. He was familiar with the different positions at Pinckneyville and for Illinois Department of Corrections. He heard the Petitioner's testimony and agreed with some of his descriptions of the job duties he performed, but not all. He did not agree with the amount of time Petitioner testified to spending doing reports. He testified that Murphysboro was a small facility with very limited number of specialized reports, such as incident summaries and reportables. He testified that he would estimate spending two hours a day doing reports and rosters at Murphysboro. T.47. He agreed with Petitioner that the two to three hours per day writing reports at Pinckneyville was pretty accurate. He agreed that it was possible for a six to eight hour day with incident summaries and reportables but noted it was rare. It was more likely Petitioner would have around three to four hours of reports if he had events going on.

Mr. Karales testified that as a lieutenant at Pinckneyville, Petitioner would have had very limited usage of keys. He testified the vast majority of any kind of key work was done by officers and sergeants. Lieutenants and majors at Pinckneyville while doing the rounds would maybe use a standard door key to open a padlock to check log books or tool control, etc.

While working at Menard as lieutenant, Petitioner would have been doing less keying of doors than the sergeants and lieutenants. Petitioner would have spent a lot more time typing, compared to a sergeant or a lieutenant. Mr. Karales testified it would have varied by the cell house and assignment. He testified that as far as Petitioner's testimony of what he did as a sergeant or a lieutenant at Menard, the description was probably pretty accurate depending on his assignment. However, Mr. Karales agreed he had never worked at Menard Correctional Center. T.49.

He agreed that depending on where Petitioner was assigned, which house or zone, his job duties would vary.

Mr. Karales testified that he made the rounds to Murphysboro Life Skill Center usually at least two to three times a month. He agreed he was not overseeing Petitioner on a day-to-day basis but noted he also saw all the paperwork that Petitioner did. T.50. He agreed he did not see the physical job duties on a day-to-day basis. T.51.

Medical Treatment

Petitioner was seen by Dr. Matthew Bradley on April 15, 2024. He reported symptoms of bilateral upper extremity numbness and tingling, with his small and ring fingers being slightly worse than his thumb, index, and long fingers. PX3, p.9-11. Petitioner reported that his symptoms had been present for many years, dating back to when he worked at Menard. He thought that his symptoms were due to a poor circulation problem, and he reported that he would spend multiple minutes massaging his hands in the morning to improve his numbness and tingling. Petitioner reported that his symptoms became worse during the time of COVID.

Petitioner reported that when a colleague at his current work location was diagnosed with carpal and cubital tunnel, a discussion revealed Petitioner's symptoms matched with his colleague's, and his colleague referred Petitioner to Dr. Bradley.

Dr. Bradley noted that Petitioner took leave from the Marine Corps and transferred to Pinckneyville in July 2021. He noted that Petitioner worked at Menard for six years, and that he worked in the segregation unit, where he performed a significant amount of bar rapping and utilization of Folger Adams keys. Petitioner described that the keys and locks were very difficult and often required a significant amount of force. He noted that at the time of his examination, Petitioner worked as a shift supervisor, which required significant typing as well as the manual filling out of forms. Dr. Bradley noted that Petitioner also worked as a circuit clerk and was attending law school.

Dr. Bradley's assessment was bilateral cubital and carpal tunnel syndrome. He found Petitioner had significant cubital tunnel with a very hypermobile nerve on both elbows. He noted Petitioner's carpal tunnel findings were less than the cubital tunnel findings. He recommended non-operative treatment with a home exercise program, anti-inflammatory medication, a wrist brace, and a nighttime pillow. An EMG and nerve conduction study were ordered. Dr. Bradley indicated that Petitioner's eight years of working at the Illinois Department of Corrections, including at Menard, at least contributed to and was causally related to the development of his

condition.

That same day, Petitioner underwent an EMG nerve conduction study with Dr. Daniel Phillips, which showed mild bilateral ulnar neuropathy across the elbows. PX4. The study was not impressive for median neuropathy at the wrists.

On May 6, 2024, Petitioner returned to Dr. Bradley. He continued to have symptoms. PX3, p.13-16. Dr. Bradley noted that Petitioner's ulnar nerves were very unstable and that flexing his elbow past 90 degrees reproduced the instability of his symptoms. He indicated that Petitioner's carpal tunnel was mild, and he recommended non-operative treatment in the form of anti-inflammatories and a night brace. He noted that Petitioner's ulnar nerve was severe and required surgical intervention, which was discussed and planned.

On June 5, 2024, Petitioner underwent a left elbow cubital tunnel release and ulnar nerve transposition with Dr. Bradley. PX6. Petitioner was kept off work through June 10, 2024, after which he was returned to restrictions of desk work only. PX3, p.21.

Petitioner returned to Dr. Bradley's office on June 20, 2024. He reported that the numbness and tingling had resolved. PX3, p.22-25. However, Petitioner continued to report symptoms on the right side which had not improved, and therefore, surgical treatment was planned. Petitioner was kept on restrictions of desk work only through July 8, 2024.

On June 26, 2024, Petitioner underwent surgery with Dr. Bradley in the form of a right elbow open cubital tunnel release with ulnar nerve transposition. PX7. Petitioner was kept off work through July 1, 2024, after which he could return to work with restrictions of desk work only. PX3, p.30.

On July 11, 2024, Petitioner returned to Dr. Bradley in follow up. He reported that his preoperative symptoms had resolved. PX3, p.31-33. Dr. Bradley recommended that Petitioner focus on endurance and strengthening his hand and elbow. He released Petitioner to return to work four to five days per week, full duty with no restrictions. He placed Petitioner at maximum medical improvement.

Expert Opinions & Testimony

Dr. Matthew Bradley—Treating Physician

Dr. Bradley testified via deposition on June 18, 2025. Dr. Bradley testified the Petitioner was 31 years old and had no comorbid risk factors outside of work that were contributory to his symptoms. PX8, p.10.

Petitioner had advised Dr. Bradley his symptoms had been present for many, many years and that it wasn't until the COVID pandemic that they really started bothering him. He testified that at first, Petitioner thought it was a circulation problem because he would sit and massage his hands. During COVID, as he was having to lock and unlock more doors than usual it came to a head and it just kept progressing since then. PX8, p.11. Dr. Bradley testified that he has seen

many patients from different facilities with the same onset of symptoms during the COVID pandemic and had seen patients from Menard around the same timeframe.

Regarding causation, Dr. Bradley testified that one of the causes of cubital tunnel with unstable ulnar nerves was repetitive bending and extending. PX8, p.12. If force was added to that, making it more difficult to bend and straighten the elbow, it was one of the most common causes for the development of cubital tunnel. PX8, p.13. Dr. Bradley testified that with Petitioner working at Menard during the COVID pandemic, opening and closing heavy doors, heavy chuckholes and using force repetitively it would lead to an unstable ulnar nerve. Dr. Bradley testified that he was told by many sergeants, lieutenants, and correctional officers that they had to “use two hands, two arms to pull on these things, put a foot up against the edge to pull on them. The chuckholes are often bent and very difficult to open.” Dr. Bradley testified it was those kinds of forces which when repetitively done would lead to an unstable ulnar nerve. PX8, p.13-14.

Dr. Bradley testified he reviewed Petitioner’s job description but did not review a job description from the employer. PX8, p.18. The job description Dr. Bradley reviewed was not contained in the certified medical records. PX3.

With regard to specific activities Petitioner performed which were contributory, Dr. Bradley testified: “It’s the repetitive pulling on doors. The chuckholes, I think, is the biggest thing that contributed. Certainly, he does a lot of different things over his many years at these many different facilities, but any kind of resisted elbow flexion would lead to unstable ulnar nerves. He worked at Menard particularly during the COVID pandemic. I’ve had many correctional officers that started as lieutenants and told me these doors are very heavy, very difficult, will often describe using both hands, sometimes a foot to open these chuckholes and open these doors. It would be the doors and the chuckholes, I think, that would be the major contributors to the cubital tunnel”. PX8, p.19-20.

Dr. Bradley testified that he did not know how often Petitioner had to open and close a chuckhole per shift, as Petitioner had worked in multiple facilities in multiple different capacities. He testified he had not been provided a statistical figure as to the force required to open and close a chuckhole and relied upon his experience with hundreds of correctional officers’ descriptions of the significant force it took. PX8, p.21-22.

Dr. Bradley testified it was his understanding that there was an uptick in job duties during COVID in 2020 and 2021. PX8, p.24. Dr. Bradley testified he was aware that Petitioner took a leave of absence from IDOC in 2020 to join the Marine Corp. He did not know the length of the leave of absence. When asked if large leaves of absence of 150 to 200 days would in any way affect his causation opinion, he testified, “not particularly”. PX8, p.25. He testified that Petitioner advised him that his symptoms started at Menard particularly during COVID and the fact that he took off time after that time period would not affect his causation opinion at all. He testified that once there was an unstable nerve, a nerve moving around, it did not matter how much time you took off after, the nerve would not all of a sudden become stable. He testified the nerve was moving around because the structures that supported the nerve were no longer competent. PX8, p.25-26. He testified there was no amount of time off, bracing or anti-inflammatories that would make the nerve go back into its groove and the structures miraculously grow back and provide

stability. PX8, p.26. When asked whether it was possible that whatever he was doing during a 200-day period that he was not at the IDOC was what caused an uptick in his symptoms, he stated anything was possible, but Petitioner had reported to him that the symptoms started before he took the leaves of absence. Dr. Bradley agreed that his causation opinion was based on the information given to him by Petitioner.

Dr. Bradley knew Petitioner was a law student and was the Circuit Clerk in Williamson County. PX8, p.27. He was aware of his leaves of absence.

Dr. Bradley testified that Petitioner's military job duties could have been a causative factor in his development of cubital tunnel syndrome. PX8, p.28. He did not recall exactly what Petitioner did in the military, noting he was in the Marine Corps from May 11 to October 17, 2024 for training. He testified he pretty much knew what job duties soldiers performed, and some of their job duties could contribute to it.

Dr. Bradley testified he did not know how many times per shift Petitioner used a Folger Adams key. He also testified he had not personally used a Folger Adams key and did not know the force required to use one. PX8, p.33. He believed that bar rapping was performed once per shift and did not know how long it took to complete.

Dr. Patrick Stewart —Respondent's Section 12 Examiner

On January 14, 2025, Petitioner was evaluated by Dr. Patrick Stewart at the request of the Respondent and pursuant to Section 12 of the Act. RX5. Dr. Stewart testified his examination of Petitioner included reviewing medical records, taking a history from the Petitioner himself, and performing a physical examination. RX5, p.8-13. Petitioner advised him he had experienced symptoms, including a snapping sensation in his elbow and numbness and tingling in his fingers, for years. RX5, p.13. Dr. Stewart testified at length of Petitioner's job duties based on the IDOC form and from his own discussion with Petitioner where Petitioner had the opportunity to explain, in detail, his job duties. RX5, p.14-15.

Dr. Stewart testified that based on his review of the medical records and job descriptions, Petitioner's physical examination, the history given by Petitioner, and his own knowledge of IDOC facilities, Petitioner's cubital tunnel syndrome was not related to his IDOC job duties. RX5, p.18. He opined the risk factor for developing cubital tunnel syndrome was prolonged forceful gripping, not holding and releasing. RX5, p.18. He further opined that the other risk factor for developing cubital tunnel syndrome was the maintenance of the elbow in a flexed or hyper-flexed position for a prolonged period of time, and no such activities were alleged to have been completed during Petitioner's employment. RX5, p.18-19.

Legal Analysis and Conclusions

Petitioner bears the burden of proving each element of his case by a preponderance of the evidence. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203 (2003). He must prove he suffered a disabling injury which arose out of and in the course of his employment. *Id.* The phrase "in the course of employment" refers to the time, place and circumstances surrounding the injury. *Id.* To

satisfy the “arising out of” prong, Petitioner must show that the injury “...had its origin in some risk connected with, or incidental to, the employment.” *Id.* Petitioner’s claim is compensable only if he meets his burden of proving his bilateral elbow injuries arose out of and in the course of his employment.

A claimant alleging an accidental injury due to repetitive trauma must show that the injury is work-related and not a result of the normal degenerative aging process. See *Peoria County Belwood Nursing Home v. Indus. Comm’n*, 15 Ill. 2d 524, 530 (1987).

The Commission may review the manner and method of a claimant's job to determine if such duties are sufficiently repetitive to establish a compensable accident under a repetitive trauma theory of recovery. See *Williams v. Indus. Comm’n*, 244 Ill. App. 3d 204, 211, 614 N.E.2d 177 (1993) citing *Perkins Product Co. v. Indus. Comm’n*, 379 Ill. 115, 120 (1942) (“the claimant's injury 'was directly connected with the manner and method in which she was required to do her work, and to use her arm in the discharge of her duties'”). Although medical testimony as to 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 claimant’s work activities caused the condition complained of.” *Nunn v. Indus. Comm’n*, 157 Ill. App. 3d 470, 477-478 (1987). After carefully considering the totality of the evidence, the Commission finds Petitioner did not meet his burden of proving he sustained a work-related injury as a result of repetitive trauma. This is primarily due to Petitioner’s lack of credibility and Dr. Bradley’s reliance on Petitioner’s report of symptoms and description of work activities in forming his causation opinion with regard to his cubital tunnel syndrome.

Petitioner’s version of events did not always match with the other evidence submitted at the time of hearing. Petitioner testified that he did not know that his condition was work related until advised by Dr. Bradley at the time of his initial evaluation on April 15, 2024. T.26. However, a review of Dr. Bradley’s records shows that Petitioner completed a registration form for that visit, which indicated that the reason for his visit was workers’ compensation related. Petitioner testified that he filled out this form prior to the office visit with Dr. Bradley. T.42. This suggests that Petitioner was aware of the work-related nature of his condition prior to his visit with Dr. Bradley, in contravention with his own testimony.

Petitioner testified that while working at Pinckneyville Correctional Center and Murphysboro Life Skill Re-Entry Center, his most hand intensive activities were typing and filling out reports and rosters¹. He testified that on a low day, he would spend two to three hours performing these activities. T.19-23. On a high day, he could spend six to eight hours writing reports and rosters. T.21. However, Mr. Jamie Karales, the Assistant Warden of Operations at Pinckneyville Correctional Center, testified that while he agreed with the tasks described by Petitioner, he disagreed with the frequency of the tasks. Mr. Karales testified that Murphysboro was a small facility with very limited number of specialized reports, such as incident summaries

¹ There was extensive testimony regarding typing duties that are not risk factors for cubital tunnel, but rather risk factors for carpal tunnel, a condition not claimed as a work injury by Petitioner. Petitioner’s claim for benefits was limited to his bilateral elbows and arms. AX2, p.1. While the testimony regarding these duties and the opinions of Dr. Bradley relating to carpal tunnel are not relevant to the issue of cubital tunnel, the Petitioner’s description of duties in opposition to Mr. Karales’ testimony is relevant to our assessment of Petitioner’s credibility.

and reportables. T.46. He estimated that maybe two hours a day could be spent doing reports and rosters at Murphysboro. T.47. He agreed with Petitioner that the two to three hours per day writing reports at Pinckneyville was pretty accurate and that it was possible for a six to eight hour day with incident summaries and reportables but noted it was rare. *Id.* He estimated the maximum time spent on that activity would be around three to four hours. *Id.* Mr. Karales also disagreed with Petitioner's testimony regarding his usage of key work as a lieutenant, noting that the vast majority of any kind of key work was done by officers and sergeants. *Id.* We find Mr. Karales testimony to be credible and the conflicting testimony would suggest an exaggeration of Petitioner's duties by Petitioner.

We also note Petitioner's testimony regarding his resignation from his position as Circuit Clerk of Williamson County. Petitioner held an elected public office that he resigned from, initially announcing to his constituents he was resigning due to a conflict with his military deployment. It was only after a news article was issued regarding the circumstances surrounding his resignation, that he admitted he had resigned due to his participation in a pretrial diversion agreement with the U.S. Attorney's office, wherein he agreed to resign his position and never run for re-election of any public office. While not relating to this case directly, his propensity to be less than forthcoming when it suits him speaks to the overall credibility of the Petitioner when viewed in conjunction with the other case-related discrepancies.

These credibility issues are particularly troublesome, as Dr. Bradley very clearly relies upon Petitioner's version of events when forming his causation opinion. When provided with a potentially alternate cause of Petitioner's condition, Dr. Bradley admitted it was possible for Petitioner's condition to be caused by whatever Petitioner was doing during his 200-day leave in 2020, or Petitioner's military job duties; however, he specifically stated that Petitioner had reported to him that the "symptoms started before he took those leaves of absence" and that he was "just stuck with what he told me when his symptoms developed". PX8, p.25-26, 28. Dr. Bradley rejected any impact of the Petitioner's leaves of absence would have had on his causation opinion, based upon Petitioner's report to him of the onset of symptoms. We find the extensive leaves of absence to be significant to Petitioner's repetitive trauma claim as his presence at work directly affects the frequency with which Petitioner would have been performing his work duties.

While Dr. Bradley testified his opinion would not be impacted by Petitioner's leaves of absence, it is apparent he did not have a complete understanding of the timing or extent of Petitioner's leaves of absence. Dr. Bradley was provided some, but not all information regarding Petitioner's numerous leaves of absence for his participation in the Union, Army National Guard, and Marine National Guard, as well as his Circuit Court clerk position. Dr. Bradley testified he had received a written job description at the time of his evaluation of Petitioner. His testimony is consistent with the work history/job description introduced into evidence as PX9. However, the job description appears to be incomplete with regard to the Petitioner's leaves of absence. The listed leaves of absence included an AFSCME Union leave for 2 months in 2016, an Illinois Army National Guard leave from June 27, 2017 to November 15, 2017 leave for military training, an AFSCME Union leave for two months in 2018 and a United States Marine Corp leave from May 11, 2020 to October 27, 2020 for training. While the document's reference to the 2018 AFSCME Union Leave shows a leave lasting 66 days, there is no reference to Petitioner's leave for military drills and training in 2018 lasting 98 days. T.35-36. It also does not include the leave of absence

from February 2020 to March 18, 2020, which is essential to the timeline of the onset of symptoms, as described below. The form submitted also does not include Petitioner's 130-day leave of absence from January 28, 2021 to June 6, 2021 for his Circuit Court position. To make a reliable causation opinion, Dr. Bradley would need to know the length of time Petitioner was actually performing the job duties of that position.

Dr. Bradley's testimony was that Petitioner's symptoms did not start to bother him until the COVID pandemic, noting that during that period Petitioner reported having to lock and unlock more doors than usual. However, this was not what his initial office visit record stated. The contemporaneously recorded office note stated only that Petitioner had an increase in symptoms at the time of COVID. Dr. Bradley was clearly comparing Petitioner's report of an increase of symptoms during this period to the experience of other correctional officers during the time of COVID. This was evident in his testimony that he had seen many patients from different facilities with the same onset of symptoms during the COVID pandemic, specifically noting several patients from Menard from the same time frame. He testified that he had been told by many sergeants, lieutenants, and correctional officers that they had to "use two hands, two arms to pull on these things, put a foot up against the edge to pull on them. The chuckholes are often bent and very difficult to open". PX8, p.13-14. Dr. Bradley testified it was those kinds of forces which when repetitively done would lead to an unstable ulnar nerve. Dr. Bradley clearly relied upon the prior reports of force and repetitiveness of the task in forming his causation opinion relative to Petitioner. However, Dr. Bradley did not have an accurate frame of reference to address the true repetitiveness that Petitioner was exposed to during this period. Petitioner's own testimony suggests Petitioner was on a leave of absence from February 15, 2020 to March 18, 2020 and then left for basic training for the Marine Corps from May 11, 2020 through October 29, 2020. Dr. Bradley testified that Petitioner had advised him that his symptoms came about prior to his "leaves" of absence. PX8, p.26. However, the plural nature of the response would suggest Petitioner was having an uptick of symptoms prior to both of his leaves of absence that year, the first of which began on February 15, 2020; a detail Dr. Bradley did not appear to be privy to, as it would mean Petitioner's symptoms would have begun at least a month prior to COVID lockdowns. This is in direct opposition to Dr. Bradley's assumption that Petitioner's symptoms began with the increase in work activities due to COVID.

It is clear from Dr. Bradley's testimony he did not have a thorough understanding of Petitioner's position or the frequency he engaged in his job duties. He appears to have relied upon his general understanding of the repetitive exposures for correctional officers at Menard during the time period of Petitioner's employment there. Given the Petitioner's unusual amount of outside activism and resultant leaves of absence, his employment there did not equal his presence there. It is simply not sufficient for Dr. Bradley to provide a reliable causation opinion.

Based on the foregoing, Petitioner failed to prove he suffered a work-related accident and that his current condition is causally related to his job duties and the Arbitrator erred in finding accident and causation.

For the foregoing reasons, the Commission denies benefits because Petitioner failed to prove he sustained an injury arising out of and in the course of his employment on April 15, 2024.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 30, 2025, is reversed in its entirety and all benefits are denied.

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.

June 22, 2026

O: 04/21/26

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	24WC013098
Case Name	Justin Maze v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 9/30/2025

/s/ Bradley Gillespie, Arbitrator
Signature

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



SEPTEMBER 30 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF SEPTEMBER 30 2025 3.72%

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**

Justin Maze
 Employee/Petitioner

Case # **24** WC **13098**

v.

Consolidated cases: _____

State of IL / 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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **July 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 **April 15, 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 **\$92,753.96**; the average weekly wage was **\$1,783.73**.

On the date of accident, Petitioner was **30** years of age, *married* with **1** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,189.15/week for 5 2/7 weeks, commencing June 5, 2024 through July 11, 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 July 11, 2024 through July 8, 2025, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of \$1,024.87/week for 75.9 weeks, because the injuries sustained caused the 15% loss of right arm and the 15% loss of Petitioner's left arm, as provided in Section 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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUSTIN MAZE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case # 24 WC 13098
	)	
STATE OF ILLINOIS/	)	
PINCKNEYVILLE CORRECTIONAL	)	
CENTER,	)	
	)	
Employer/Respondent.	)	

DECISION OF ARBITRATOR

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's Motion for a hearing on all issues. Issues in dispute were accident, notice, causation, liability for medical expenses, liability for temporary total disability benefits, and the nature and extent of Petitioner's injuries. (Tr. pp. 4-6; Arb. Ex. 1)

Petitioner filed an Application for Adjustment of Claim alleging injury to his bilateral hands and arms which occurred during repetitive duties with a manifestation date of April 15, 2024. (Arb. Ex. 2)

FINDINGS OF FACT

Petitioner's Testimony

Petitioner has been employed at Allied Security since April 2025. (Tr. p. 12) Prior to this, he was a shift supervisor from June 2023 through March 13, 2025, at Murphysboro Life Skills Re-Entry Center, which is a subsidiary of Pinckneyville Correctional Center. (Tr. pp. 12- 13) Prior to this, Petitioner worked at Pinckneyville Correctional Center from July 2021 through June 2023. (Tr. pp. 13-14) While working at Pinckneyville Correctional Center, Petitioner was a lieutenant from July 2021 through December 2021 and was promoted to a shift supervisor in December 2021. (Tr. p. 13) Prior to working at Pinckneyville, Petitioner worked at Menard Correctional Center from September 2015 through July 2021. (Tr. p. 14) At Menard, Petitioner began his employment as a correctional officer and was subsequently promoted to sergeant, and finally to lieutenant in May 2019. (Tr. pp. 14, 36) Prior to working at Menard, Petitioner was employed for the City of Marion as a laborer from 2014 through September 2015. (Tr. p. 15)

Petitioner testified that while at Menard Correctional Center, his duties included daily bar rapping and utilization of Folger Adams keys. (Tr. pp. 15-16) He estimated that he used keys for doors and chuck holes 30 to 60 times per day, excluding overtime. (Tr. pp. 16-17) He testified that the locks at Menard were "very antiquated", and the doors were very heavy. (Tr. p. 17) He stated

that when pushing on the doors, they “would get jammed up” which required keying them open to slide and shut all the way. *Id.*

Petitioner testified that his job duties as a sergeant were similar to those of a correctional officer, and he still opened cell doors. (Tr. p. 17) He testified that during lockdown, which was “pretty prevalent”, he assisted with carrying trays, and that this could be up “five sets of stairs” if he was in the east or west house. *Id.*

Petitioner testified that as a lieutenant, he was involved in supervising staff, but he still assisted in “opening up doors and things of that nature.” (Tr. p. 18) He also performed regular typing on a computer. (Tr. pp. 18-19)

When he transferred to Pinckneyville Correctional Center, he supervised zones. (Tr. p. 19) He testified that there was a control pod and a patrol officer opened up the doors; however, there were times that he keyed open doors. *Id.* He stated that he was not a lieutenant at Pinckneyville for very long before being promoted to shift supervisor. *Id.* As a shift supervisor, his duties were primarily administrative, which involved preparing rosters and typing shift reports, overtimes reports and incident summaries. (Tr. pp. 19-20) Once per shift, he toured the cell houses which involved unlocking gates. (Tr. p. 20) He testified that his duties at Pinckneyville were hand-intensive duties, particularly typing and filling out reports and rosters. *Id.* He estimated that on slow days, he spent two to three hours typing and filling out reports, and on busier days, he could spend six to eight hours doing so. (Tr. pp. 20-21)

When he transferred to Murphysboro Life Skills and Re-Entry, he was a shift supervisor, and his duties were the same as they were at Pinckneyville, namely, filling out rosters, reports, reportables, lockdown reports, and incident summaries. (Tr. pp. 21-22) He estimated that the time he spent performing these activities was similar to what it was at Pinckneyville – two to six hours per day. (Tr. pp. 22-23) Once per shift, he inspected the dorms, supply closets, and similar areas, which required the use of keys to unlock doors. (Tr. p. 22)

Petitioner testified that he began noticing symptoms around 2017 and 2018 while working for Respondent, and that his symptoms progressively worsened. (Tr. pp. 25-26)

Medical Evidence

Petitioner presented to the office of Dr. Matthew Bradley on April 15, 2024, and reported symptoms of bilateral upper extremity numbness and tingling, with his small and ring finger being slightly worse than his thumb, index, and long fingers. (PX 3 p. 9) Petitioner reported that his symptoms had been present for many years, dating back to when he worked at Menard. *Id.* He thought that his symptoms were due to a poor circulation problem, and he reported that he would spend multiple minutes massaging his hands in the morning to get the numbness and tingling to improve. *Id.* Petitioner reported that his symptoms became worse during the time of COVID. *Id.* Petitioner reported that a colleague at his current work location was diagnosed with carpal and cubital tunnel, and in discussing same, Petitioner’s symptoms matched with his colleagues, and his colleague referred Petitioner to Dr. Bradley. (PX 3 p. 9)

Dr. Bradley noted that Petitioner took leave from the Marine Corps and transferred to Pinckneyville in July 2021. (PX 3 p. 9) He noted that Petitioner worked at Menard for six years, and that he worked in the segregation unit, where he performed a significant amount of bar rapping and utilization of Folger Adams keys. *Id.* Petitioner described that the keys and locks were very difficult and often required a significant amount of force. *Id.* Dr. Bradley noted that Petitioner currently worked as a shift supervisor, which required significant typing as well as the manual filling out of forms. *Id.* Dr. Bradley noted that Petitioner also worked as a circuit clerk and was attending law school. (PX 3 p. 9)

On exam of the elbows, Petitioner had bilateral pain to palpation over the medial epicondyles, tingling along the ulnar nerve distribution and over the small finger, positive Tinel's sign, and hypermobile ulnar nerves bilaterally. (PX 3 pp. 9-10) Exam of the bilateral wrists and hands showed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, and positive Phalen's and Tinel's testing. (PX 3 p. 10) X-rays of the wrists and elbows showed no acute fractures, dislocation, and no significant degenerative changes. (PX 3 pp. 10-11)

Dr. Bradley's assessment was bilateral cubital greater than carpal tunnel syndrome. (PX 3 p. 11) He stated that Petitioner had significant cubital tunnel with a very hypermobile nerve on both elbows. *Id.* He noted Petitioner's carpal tunnel findings were less than the cubital tunnel findings. *Id.* He recommended non-operative treatment with a home exercise program, anti-inflammatory medication, a wrist brace, and a nighttime pillow. *Id.* An EMG and nerve conduction study was ordered. (PX 3 p. 11) Dr. Bradley indicated that Petitioner's eight years of working at the Illinois Department of Corrections, including at Menard, at least contributed to and was causally related to the development of his condition. *Id.*

That same day, Petitioner underwent an EMG nerve conduction study with Dr. Daniel Phillips, which showed mild bilateral ulnar neuropathy across the elbows. (PX 4) The study was not impressive for median neuropathy at the wrists. *Id.*

Petitioner returned to Dr. Bradley on May 6, 2024, and reported that he continued to have symptoms. (PX 3 p. 13) He had been sleeping with his arms locking in a fully extended position. *Id.* He reported that when he bent his elbow past 90 degrees, he had a sharp stabbing pain with burning down his ulnar forearm into his fourth and fifth digits, with the left side being greater than the right. *Id.* Dr. Bradley noted that Petitioner's ulnar nerves were very unstable and that flexing his elbow past 90 degrees reproduced the instability of his symptoms. (PX 3 p. 15) He indicated that Petitioner's carpal tunnel was mild, and he recommended non-operative treatment in the form of anti-inflammatories and a night brace. *Id.* He noted that Petitioner's ulnar nerve was severe and required surgical intervention, which was discussed and planned. *Id.*

On June 5, 2024, Petitioner underwent a left elbow cubital tunnel release and ulnar nerve transposition with Dr. Bradley. (PX 6) Intraoperatively, Dr. Bradley noted that the nerve was in a transposed position directly over the tip of the medial epicondyle. (PX 6 p. 3) The cubital tunnel was released and traced proximally to distally until no further compression was appreciated. *Id.* Petitioner was kept off work through June 10, 2024, after which he was returned to restrictions of desk work only. (PX 3 p. 21)

When Petitioner returned to Dr. Bradley's office on June 20, 2024, he reported that the numbness and tingling had resolved. (PX 3 p. 22) Petitioner continued to have symptoms on the right side which had not improved, and therefore, surgical treatment was planned. (PX 3 p. 24) Petitioner was kept on restrictions of desk work only through July 8, 2024. (PX 3 p. 25)

On June 26, 2024, Petitioner underwent surgery with Dr. Bradley in the form of a right elbow open cubital tunnel release with ulnar nerve transposition. (PX 7) Intraoperatively, Dr. Bradley noted that the ulnar nerve was in a subluxed position directly over the tip of the medial epicondyle. (PX 7 p. 3) The cubital tunnel was released over the nerve, giving further instability, and the nerve was then transposed over the anterior aspect of the medial epicondyle. *Id.* Petitioner was kept off work through July 1, 2024, after which he could return to work with restrictions of desk work only. (PX 3 p. 30)

Petitioner returned to Dr. Bradley on July 11, 2024, and reported that his preoperative symptoms had resolved. (PX 3 p. 31) Dr. Bradley recommended that Petitioner focus on endurance and strengthening his hand and elbow. (PX 3 p. 33) He indicated that Petitioner could return to full duty with no restrictions and four or five days, and he placed Petitioner at maximum medical improvement. *Id.*

Section 12 Report and Deposition of Dr. Patrick K. Stewart

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Patrick Stewart on January 14, 2025. (RX 4) Dr. Stewart indicated that he was provided with a job description for a shift supervisor. (RX 4 p. 1) He reviewed Petitioner's medical records, intake form from Dr. Bradley, and injury reports. (RX 4 pp. 2-5) Dr. Stewart noted that Petitioner was currently working as a shift supervisor, that he worked as the Circuit Clerk for Williams County, and that he was currently attending law school. (RX 4 p. 3) He noted that Petitioner opened locks, doors, gates, and handcuffs daily, that he typed reports and performed administrative tasks, and during the pandemic lockdown, he loaded and unloaded food carts. *Id.* He noted that Petitioner was very direct, honest, forthright, and cooperative. (RX 4 p. 7)

With respect to causation, he indicated that prolonged forceful grasping placed individuals at an increased risk for cubital tunnel, but he did not feel that Petitioner's job descriptions alleged same. (RX 4 p. 7) He stated there was no trauma or forced hyperflexion of the elbow that would result in instability of the ulnar nerves. *Id.* Dr. Stewart stated that the snapping sensation Petitioner experienced was linked to the time Petitioner was a shift supervisor, and Dr. Stewart did not feel that Petitioner's activities placed him at an increased risk. *Id.* He stated that Petitioner's cubital tunnel and subluxing ulnar nerves were not related to the "work activities during the period of time they were alleged." *Id.*

Regarding the reasonableness and necessity of medical treatment, Dr. Stewart did not feel that the x-rays were indicated because Petitioner had no history of trauma, joint pain or swelling. (RX 4 p. 8) Dr. Stewart stated that Petitioner's diagnostic testing was consistent with cubital tunnel and Petitioner's report of a snapping sensation was consistent with subluxation of ulnar nerves. *Id.* Dr. Stewart opined that a release and transposition was appropriate treatment for same. *Id.*

Dr. Stewart testified via deposition on June 3, 2025. (RX 5) He performs two to four IMEs per month and charges \$2,500 for same, the majority of which are at the request of the defense. (RX 5 pp. 6, 19, 20) He charges \$1,200 for depositions. (RX 5 p. 7) On direct examination, Dr. Stewart testified consistently with his report.

Dr. Stewart was unaware that Petitioner previously worked as a laborer for the City of Marion. (RX 5 p. 26) When asked about his opinions regarding an individual's past employment and the development of compression neuropathies, he testified that he only looks at the period of time just prior to the onset of symptoms and does not take into account what duties a person performed five years prior, even if it was an extremely hand-intensive job. (RX 5 pp. 25-26)

He testified that Petitioner's cubital tunnel was related to the instability of his ulnar nerves. (RX 5 pp. 27-28) He testified that Petitioner's symptoms occurred when his elbow was bent over 90 degrees, but he stated that none of Petitioner's work activities required Petitioner's elbow to be flexed at greater than 90 degrees of flexion unless he was talking on the phone. (RX 5 p. 29)

He testified that at Menard, Petitioner utilized Folger Adams keys and rapped bars but stated that this "obviously was eliminated" when he was promoted and believed Petitioner performed these activities for only the first year and a half. (RX 5 pp. 15-16) He believed the duties of an officer and sergeant were different and stated that a sergeant is supervising and "may perform some hands-on when necessary", but that they have administrative duties beyond those of an officer. (RX 5 pp. 24-25) When asked what happened to the duties of officers, sergeants, and lieutenants during the pandemic, he testified that he presumed their duties changed dramatically. (RX 5 pp. 20-21)

He admitted that Petitioner was 30 years old and had no comorbid or outside risk factors for the development of compression neuropathy. (RX 5 p. 20) Dr. Stewart testified as to his belief that pathology only occurs when the period of activity exceeds the period of recovery, even if the activity being performed is considered an "at-risk" activity. (RX 5 pp. 23-24) He admitted that he has never found causation for a correctional officer, sergeant or lieutenant at any correctional facility. (RX 5 pp. 23-24)

Deposition of Dr. Matthew Bradley

Dr. Bradley testified via deposition on June 18, 2025. (PX 8) Dr. Bradley is a board-certified orthopedic surgeon who performs two to four cubital tunnel surgeries per week. (PX 8 pp. 5, 16) Dr. Bradley testified consistently with his medical records. He testified the x-rays are the standard of care when working up musculoskeletal problems and that they are cheap, quick, and easy and can rule out help rule out many conditions and diagnoses. (PX 8 p. 8)

Dr. Bradley was aware of Petitioner's jobs before he began employment with Respondent, was aware of Petitioner's military history, and was aware that Petitioner worked as a circuit clerk and was a law student. (PX 8 pp. 27-29)

Dr. Bradley testified that Petitioner also had a diagnosis of carpal tunnel syndrome, but that Petitioner did not presently require ongoing treatment; however, Dr. Bradley stated that if

continued to repetitively utilize his hands, his carpal tunnel could potentially worsen with time. (PX 8 pp. 30-31)

Dr. Bradley testified the Petitioner was 31 years old and had no comorbid risk factors outside of work that were contributory to his symptoms, and stated that Petitioner did not have obesity, diabetes, or thyroid problems. (PX 8 p.10) He testified that Petitioner did not have any outside activities or hobbies that were contributory. (PX 8 p.14) When asked if cubital tunnel was idiopathic, he testified:

The term "idiopathic" is utilized by people who do not know what that is or cannot figure out what that cause is. But no. Carpal and cubital tunnel there is a cause. There is a reason that these are symptoms. They don't just miraculously happen. (PX 8 pp. 27-28)

He testified that he has seen many patients from different facilities with the same onset of symptoms during the COVID pandemic and had certainly seen patients from Menard around the same timeframe. (PX 8 pp.10-11)

Regarding causation, Dr. Bradley testified:

So cubital tunnel with unstable ulnar nerves like this gentleman has is cause for – one of the causes can be repetitive bending and extending. So bending your elbow or straightening your elbow out. If you add a force to that so that it made it more difficult to bend and straighten your elbow, that is one of the most common causes for the development of cubital tunnel. When you look at this gentleman, particularly working at Menard during the COVID pandemic when he was opening and closing heavy doors, heavy chuckholes, many of which times these sergeants, lieutenants, correction officers have told me they've had to use two hands, two arms to pull on these things, put a foot up against the edge to pull on them. The chuckholes are often bent and very difficult to open. It's those kind of forces repetitively done that would lead to an unstable ulnar nerve. (PX 8 pp. 13-14)

With regard to specific activities Petitioner performed which were contributory, Dr. Bradley testified:

It's the repetitive pulling on doors. The chuckholes, I think, is the biggest thing that contributed. Certainly, he does a lot of different things over his many years at these many different facilities, but any kind of resisted elbow flexion would lead to unstable ulnar nerves. He worked at Menard particularly during the COVID pandemic. I've had many correctional officers that started as lieutenants and told me these doors are very heavy, very difficult, will often describe using both hands, sometimes a foot to open these chuckholes and open these doors. It would be the doors and the chuckholes, I think, that would be the major contributors to the cubital tunnel. (PX 8 pp. 19-20)

Dr. Bradley testified that Petitioner did not report symptoms of nerve instability prior to working for Respondent. (PX 8 pp. 11-12) Dr. Bradley was aware that Petitioner had taken leaves of absence from employment with Respondent and testified that Petitioner's symptoms began before he took his leaves of absence. (PX 8 pp. 24-26) He explained that once you have an unstable ulnar nerve, it does not matter how much time you take off afterwards, as the nerve is not going to become stable. *Id.*

Documentary Evidence

Respondent's Exhibit 2, Supervisor's Report of Injury or Illness, indicates that on May 8, 2024, Petitioner provided written notice to Respondent of injury which occurred through "progressive use of hands/elbows." (RX 2) Respondent's Exhibit 3, an incident report completed by Petitioner on May 10, 2024, which indicated that Petitioner had sought medical treatment concerning numbness and pain in his elbows and that on May 6, 2024, during a follow up visit, he was diagnosed with bilateral cubital tunnel due to progressive use. (RX 3)

Respondent's Exhibit 6 noted that Petitioner issued a statement indicating that he was stepping down as Circuit Clerk due to an upcoming deployment. (RX 6 pp. 7-8) Subsequently, Petitioner issued a statement apologizing that he had omitted that he had entered a pretrial diversion agreement which had included his deployment. (RX 6 pp. 1-2) The Exhibit noted that Petitioner's intention was to protect his family's reputation, and Petitioner took full accountability for his omission. *Id.*

Petitioner's Exhibit 9, a work history timeline and detailed job description, indicated that Petitioner had worked for the City of Marion for one-and-a-half years as a laborer, and that his duties included handling heavy equipment, performing maintenance duties, engaging in repetitive motions such as clamping water mains, performing water main taps, and operating skid steers. (PX 9 p. 4) He indicated that he worked as the Circuit Clerk for Williamson County for three-and-a-half years and performed document handling, filing, data entry, typing, and lifting office supplies and files. (PX 9 p. 5)

Petitioner noted that he worked at Menard Correctional Center for six years and that his job titles included that of a correctional officer, sergeant, and lieutenant. (PX 9) He indicated that his duties included the daily operation of locks and keys and unlocking older, resistant locks that required a significant amount of force on a daily basis. (PX 9 p. 1) He also indicated typing and mouse use for many hours without adequate breaks. *Id.* He noted that he had been employed at Pinckneyville Correctional Center for two years as a correctional lieutenant and shift supervisor and at Murphysboro Life Skills Re-Entry Center for one year as a shift supervisor, where he performed prolonged typing and mouse use. *Id.* Petitioner indicated that as a shift supervisor, he performed filing of boxes, filing of 10 to 20 pounds on a weekly basis, opening doors and gates of 15 to 30 pounds on a daily basis, opening lock doors, gates and handcuffs on a daily basis, and typing reports, emails, rosters and other departmental administrative tasks on a daily basis. (PX 9 p. 7)

Petitioner noted that while with the Illinois Department of Corrections, he had daily responsibilities, including pushing heavy food carts, carrying food trays, frequently opening food ports - which required gross and fine motor skills – and extensive use of hands for manipulating

locks and handcuffs - which required strength and precision. (PX 9 p. 4) He noted that he performed bending, reaching, pushing, pulling, and fine motor manipulation repeatedly throughout an eight hour shift. *Id.*

Petitioner indicated that he had his leave of absences included from September through November 2016 for a union business, from June 17, 2017, through November 2017 due to basic training for the National Guard, from September 2018 through November 2018 for a union business, and from May 11, 2020, through October 2020 for the Marine Corps. (PX 9 p. 6)

Testimony of Jamie Karales

Mr. Karales serves as the assistant warden of operations at Pinckneyville Correctional Center. (Tr. p. 46) He agreed with some of Petitioner's testimony regarding job duties but felt that the time spent doing reports and rosters at Murphysboro was two hours per day, and the time spent doing this at Pinckneyville was two to four hours per day and six to eight hours per day once per week. (Tr. pp. 46-47) He testified that at Pinckneyville, he believed the majority of key work is performed by officers and sergeants. (Tr. pp. 47-48) He testified that Petitioner's description of what he performed as a sergeant or officer at Menard was accurate. (Tr. p. 48) He was aware that Petitioner worked overtime at Pinckneyville Correctional Center during his time at Murphysboro Correctional Center. (Tr. p. 49) He testified that he saw the paperwork from Petitioner that came across his desk, but he did not observe Petitioner's physical day-to-day duties. (Tr. pp. 50-51)

Petitioner's Testimony – Continued

Petitioner testified that he never saw a doctor for his symptoms, nor had he been told his symptoms were related to his work prior to seeing Dr. Bradley on April 15, 2024. (Tr. p. 26)

Petitioner testified that he became the Circuit Clerk in 2021 concurrently with the time he was working full-time for Respondent. (Tr. p. 23) Petitioner worked at the circuit clerk's office from 25 to 40 hours per week and performed duties of managing personnel staff, meeting with judges and attorneys, as well as typing for an hour to an hour-and-a-half per day. (Tr. pp. 23-24) Petitioner testified that he resigned from the circuit clerk's office because he entered into a pretrial diversion agreement and was never arrested, charged, or convicted. (Tr. p. 33) During the time of his employment with the circuit clerk's office, he had secondary employment approved through Respondent for "Pandora's Box", which he testified was for a product he had developed. (Tr. pp. 37-38) Petitioner testified that while in the National Guard, his duties were in human resources, so "there was more typing, things of that nature." (Tr. p. 44) When he transferred to the Marine Corps, he chose to go to the infantry, which involved carrying 100 pounds on his back and hiking long distances. *Id.*

Petitioner testified that he took a leave of absence from Menard in 2017 for basic training for the National Guard. (Tr. p. 35) He testified that in 2018, he had military drills, and he agreed that he took leave of absence in 2018. (Tr. pp. 35-36) Petitioner testified that he took a leave of absence from February 15, 2020, through March 18, 2020, and a leave for boot camp from May 11, 2020, through October 29, 2020. (Tr. pp. 36-37) He took a leave of absence from January 28, 2021, through June 6, 2021, for his position at the circuit clerk's office. (Tr. pp. 23, 37)

Petitioner testified that he previously lifted weights, but just prior to seeking treatment for his condition, he stopped working out because he was dropping weights. (Tr. p. 31) Petitioner testified that he does not smoke, is not female, is not diabetic, and does not have hypothyroidism or hypertension. (Tr. pp. 30-31)

Petitioner testified that just prior to his surgeries, his elbows were locking up, he had a burning sensation that went from his forearm to his fingertips, and his hands were constantly going numb to the point where he had to squeeze them for several minutes to get feeling back. (Tr. p. 28) He testified that surgery remedied his symptoms immediately. (Tr. pp. 28-29) Despite the improvement, Petitioner testified that he still has numbness on both his elbows and the full feeling has not returned. (Tr. p. 31)

ARBITRATOR CREDIBILITY STATEMENT

The Arbitrator had the opportunity to observe Petitioner at Arbitration and found him to be forthcoming and honest. The Arbitrator has reviewed Respondent's Exhibit 6, but gives it little weight, as same is unrelated to Petitioner's workers' compensation claim and Petitioner was not charged or convicted of any crime. (Tr. p. 33) Further, Dr. Stewart found that Petitioner was very direct, honest, forthright, and cooperative. (RX 4 p. 7) Finally, Petitioner's testimony concerning his duties was largely corroborated by Respondent's witness, Mr. Karales. (Tr. pp. 17, 20-23; Tr. pp. 46-48) Therefore, the Arbitrator finds Petitioner to be a credible witness.

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. "The word 'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens...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.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Indus. Comm.*, 290 Ill. 530, 125 N.E. 254 (1919). 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, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). 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. Indus. Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Indus. 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).

Illinois Courts have refused to adopt any standard threshold which a claimant must meet in order for his or her job to classify as repetitive enough to establish causal connection. In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted 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*, N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "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 recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra*.

In keeping with this precedent, the Commission held in the repetitive correctional case of *Craig Briley v. Pinckneyville Corr. Ctr.* that:

The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the *totality of work activity* that requires a specific movement that is associated with the development of a condition. Thus, *the variance in job duties is not as important* as the specific force, flexion and vibratory movements requisite in Petitioner's job (emphasis added). *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013).

And in the case of *Christopher Parker v. IDOT* the Commission stated, "In 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 in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling*, N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . .

would be meaningless” in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma.” *Id.* at 1142. Additionally, the Court noted that such information “may” carry great weight “only where the work duty complained of is a common movement made by the general public.” *Id.* at 1142. However, the record establishes that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a correctional officer/lieutenant, which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

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

With regard to the relevance of Petitioner's job history, the Appellate Court in *PPG Industries* highlighted that claimant's entire work history is relevant and routinely considered in repetitive trauma cases because, “[b]y their very nature, repetitive-trauma injuries may take years to develop ...” *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 22 N.E.3d 48, 51, (2014). Additionally, Courts have recognized that a claimant's symptoms can manifest, persist or even worsen following retirement. *See Lemes v. Peko Tile, Inc.*, 07 I.W.C.C. 1545 (2007) (holding the current employer with which the injury manifested itself liable for the entire claim when both employers contributed to the development of the resulting injury); *See Rachel Vasquez v. Menard Correctional Center*, 10 I.W.C.C. 0826 (2010) (where claimant's condition did not improve after she switched to a non-repetitive job and the Commission held the previous employer liable after the termination of the employer/employee relationship); *Mastrangeli v. Illinois State Toll Highway Authority*, 12 I.W.C.C. 1371 (2012) (wherein claimant's condition worsened after retiring); *See also A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999); and *White v. Illinois Workers' Comp. Comm'n* 873 N.E.2d 388 (Ill. App. 4th Dist. 2007) (holding that repetitive injuries can manifest after the termination of the employer/employee relationship).

Petitioner testified that the duties he performed as a sergeant were similar to those of a correctional officer, and his testimony in this regard was corroborated by Respondent's witness. (Tr. pp. 17, 48) The testimony and evidence demonstrate that Petitioner's duties at Menard were hand and arm intensive and included bar rapping, use of Folger Adams keys, pushing on heavy doors that got “jammed up,” carrying trays, and working in the segregation unit. (Tr. pp. 15-17; PX 9; PX 3 p. 9)

Petitioner testified that he began noticing symptoms around 2017 or 2018 and that his symptoms progressively worsened. (Tr. pp. 25-26) There is no evidence to suggest that Petitioner's symptoms began during any other period. Rather, Dr. Bradley's records suggest that Petitioner had symptoms for quite some time, but that Petitioner believed they were due to a circulation issue.

(PX 3 p. 9) Therefore, the evidence demonstrates that Petitioner's symptoms began during the period he was working at Menard as either a correctional officer or sergeant, and prior to his duties as a lieutenant. (Tr. pp. 14, 36)

Dr. Bradley testified that Petitioner's symptoms began prior to taking his leaves of absence. (PX 8, pp. 24-26) The Arbitrator notes that Petitioner took a leave from September to November of 2016 but does not find this significant as to causation or to the timeline of the start of Petitioner's symptoms, as this leave was of short duration. (PX 9) The Arbitrator notes that at the time Petitioner's symptoms began in 2017 or 2018, he had already been employed as an officer or sergeant with Respondent since September 2015 and therefore, it is certainly plausible that Petitioner's symptoms began in 2017 prior to his leave for the National Guard. (Tr. pp. 25-26)

Further, the fact that Petitioner took leaves of absence does not undo the damage that had already been caused by Petitioner's work-related activities, as Dr. Bradley explained that once the ulnar nerve is unstable, no amount of time off work is going to make the nerve stable again. (PX 8 pp. 24-26)

Even if Petitioner's symptoms began after his start at the National Guard, Petitioner testified that his duties in the National Guard consisted of "more typing" and "things of that nature", and therefore, were not a significant factor in the symptoms Petitioner developed in 2017/2018. (Tr. p. 44) In contrast, the activities Petitioner was performing for Respondent at that time were hand and arm intensive. (Tr. pp. 15-17)

The Arbitrator has considered the opinions of Dr. Stewart and Dr. Bradley and finds the opinions of Dr. Bradley more logical and persuasive. Specifically, Dr. Stewart believed that Petitioner's activities of using keys and rapping bars were "eliminated" a-year-and-a-half after his employment with Respondent, which is incongruent with the timeline of events, as a year-and-a-half after Petitioner's employment would have been in March 2017, over two years prior to Petitioner's promotion to a lieutenant, when he was still performing significant hand and arm-intensive activities. (RX 5, pp. 15-16; Tr. pp. 14, 17, 36) The Arbitrator notes that Dr. Stewart testified that he had never found causation for a correctional officer, sergeant, or lieutenant in any of their cases. (RX 5 p. 23) This diminishes Dr. Stewart's credibility.

Further, the Arbitrator finds notes that Dr. Stewart admitted that Petitioner was 30 years old and did not have any comorbid risk factors for the development of his condition yet offered no alternative explanation as to how Petitioner's condition developed. (RX 5 p. 20)

In contrast, the Arbitrator finds Dr. Bradley's opinions to be persuasive and logical, as he recognized the arm-intensive activities of pulling and manipulating difficult chuckholes and doors contributed to the development of Petitioner's symptoms. (PX 8, pp. 13-14, 19-20) Further, the Arbitrator agrees with Dr. Bradley's conclusion that there is a cause for carpal and cubital tunnel and that they "don't just miraculously happen", especially given the fact that Petitioner is a young individual with no comorbidities. (PX 8, pp. 10, 14, 27-28)

Therefore, it is for the above reasons that the Arbitrator finds that Petitioner sustained accidental, repetitive injuries to his bilateral arms which are causally related to his employment with Respondent.

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

The Workers' Compensation Act is a humane law of a remedial nature that should be liberally construed to achieve its purpose. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 902 N.E.2d 1269 (2009). Hence, the Supreme Court has established a flexible but fair standard for determining manifestation dates. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007). The manifestation date can be set as: (a) the date the employee actually became aware of the physical condition and its relation to work through medical consultation; (b) the date the employee requires medical treatment; (c) the date on which the employee can no longer perform work activities; or (d) when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007), *see also* *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987); *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

Although a claimant is aware of symptoms and carries a suspicion that these are work-related, the Supreme Court has stated, "The 'fact of injury' is not synonymous with the 'fact of discovery'" *Durand*, N.E.2d at 927. In short, claimants are not charged with filing a claim as soon as they believe they *may* have a work-related condition, nor are they penalized for failing to realize a condition is work-related when the employer feels that he or she should have. In fact, the Supreme Court stated that to rely solely on a claimant's testimony concerning symptoms, without accurate knowledge of the cause of those symptoms, would essentially be asking them to "rely on 'expert' medical testimony from a layperson." *Id.* at 929. The Court likewise noted that the claimants would have had difficulty proving injury with a sketchy and equivocal understanding of same. *Id.* at 930. The standard that "the 'fact of injury' is not synonymous with the 'fact of discovery'" has since become a safety measure employed by all Courts to ensure that the employers do "penalize an employee who diligently worked through" his or her symptoms. *Durand v. Indus. Comm'n*, 862 N.E.2d at 927, 930. In *Durand*, the claimant was not sure her pain was from carpal tunnel syndrome, but "she believed it was work-related" in 1997, some 3 years before her injuries manifested in 2000. *Durand v. Indus. Comm'n*, 862 N.E.2d at 929-30.

In the instant case, Respondent disputed notice but did not dispute the manifestation/accident date. (Arb. Ex. 1) Petitioner testified that he never saw a doctor for his symptoms, nor had he been told his symptoms were related to work prior to the date he saw Dr. Bradley on April 15, 2024. (Tr. p. 26) On that date, Petitioner received diagnostic testing which confirmed his condition. (PX 4) Respondent produced no evidence indicating that Petitioner knew his condition was related to work prior to the date he saw Dr. Bradley. The evidence shows that Petitioner reported his repetitive injuries to Respondent in writing well within 45 days after April 15, 2024. Therefore, the Arbitrator finds that Petitioner's notice to Respondent was timely.

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

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

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

Dr. Stewart felt that the x-rays Petitioner underwent were not reasonable and necessary. (RX 4) However, Dr. Bradley testified that x-rays are part of the standard of care for the workup of musculoskeletal problems and are a cheap and easy way to rule out many conditions and diagnoses. (PX 8 p. 8) The Arbitrator finds that plain x-rays were reasonable and necessary medical treatment.

The Arbitrator notes that Respondent's examiner opined that Petitioner's ulnar nerve release and transposition was appropriate treatment for his condition. (RX 4) Petitioner testified that he felt immediate relief following his surgeries. (Tr. pp. 28-29)

Therefore, based upon the above findings on accident and causation, the Arbitrator finds that the medical treatment rendered to Petitioner was reasonable, necessary, and causally related to his repetitive work duties, and that Respondent is liable for the payment of medical expenses as outlined in Petitioner's Exhibit 1.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018, 81 Ill.Dec. 896 (1984).

The evidence shows that Petitioner was incapacitated from work during the period of disputed TTD. Therefore, pursuant to the above findings on accident and causation, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits for a period of 5 2/7 weeks, commencing June 5, 2024, through July 11, 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(b)(v).

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

(ii) **Occupation:** Petitioner no longer works for Respondent and is employed through Allied Security. (T. 12) The Arbitrator places little weight on this factor.

(iii) **Age:** Petitioner was 30 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. The Arbitrator places moderate weight on this factor.

(iv) **Earning Capacity:** While there is no direct evidence of reduced earning capacity contained in the record; based on the severity of Petitioner's injuries, the requisite treatment, and the resulting disability. The Arbitrator places little weight on this factor.

(v) **Disability:** As a result of his injuries, Petitioner underwent bilateral cubital tunnel releases with ulnar nerve transpositions. (PX 6; PX 7) Petitioner testified that despite the improvement from the surgeries, he still experiences numbness on both elbows, and full feeling has not yet returned. (Tr. p. 31) 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 and the 15% loss of Petitioner's left arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC003328
Case Name	Matthew Boggs v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0187
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	James Ruppert
Respondent Attorney	Casey Fitzgerald

DATE FILED: 6/23/2026

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Boggs,
 Petitioner,

vs.

NO: 25 WC 003328

State of Illinois – Illinois Department of Transportation,
 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 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 January 5, 2026, 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 the Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

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

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

June 23, 2026

d: 06/17/26

CMD/kcb

045

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC003328
Case Name	Matthew Boggs v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	James Ruppert
Respondent Attorney	Casey Fitzgerald

DATE FILED: 1/5/2026

/s/ Jeanne AuBuchon, Arbitrator
Signature

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



JANUARY 5 2026

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF DECEMBER 30, 2025 3.50%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MATTHEW BOGGS

Employee/Petitioner

v.

ILLINOIS DEPARTMENT OF TRANSPORTATION

Employer/Respondent

Case # **25** WC **003328**

Consolidated cases: **None**

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 **Mount Vernon**, on **November 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, **12/18/2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$24,105.62**; the average weekly wage was **\$1,339.20**.

On the date of accident, Petitioner was **37** 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 **\$420.14** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$420.14**.

Respondent is entitled to any and all credits under Section 8(j) of the Act.

ORDER

Respondent shall pay medical expenses as listed in Petitioner's Exhibit 14, as provided in Section 8(a) and 8.2 of the Act. Respondent shall be given credit for medical benefits that have been paid by Respondent and Respondent's group health insurance, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$892.80/week for 42-47th weeks, commencing December 19, 2024, through December 27, 2024, and from February 4, 2025, through November 19, 2025, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for medical treatment, specifically: weight loss treatment to include GLP-1 medication and testing required for prescription of such medication; a CT discogram; and lumbar spine surgery at Dr. Gornet's discretion pursuant to Section 8(a) of the Act.

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

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

JANUARY 5, 2026

PROCEDURAL HISTORY

This matter proceeded to trial on November 19, 2025. The issues in dispute are 1) causal connection between the accident and the Petitioner's lumbar spine condition; 2) average weekly wage; 3) past medical benefits; 4) prospective medical treatment for his lumbar spine; and 5) temporary total disability (TTD) benefits after April 3, 2025. The parties stipulated that the Petitioner sustained a neck strain from the accident and that the Respondent shall receive credit for a permanent partial disability (PPD) advance. (T. 31-32)

FINDINGS OF FACT

At the time of the accident, the Petitioner was 37 years old and employed by the Respondent as a highway maintainer, performing such tasks as plowing snow, cleaning bridges, patching holes, cutting brush, operating equipment and clearing dead animals from the roadway. (AX1, T. 12-13) The Petitioner testified that his wage summary showed overtime earnings that were for mandatory overtime. (T. 28-29, PX15) He said all his overtime pay was earned when he was plowing snow for the Respondent, which was mandatory per his union contract. (T. 30) He said that refusing to plow snow was grounds for termination. (T. 30) He agreed that he did not work overtime every pay period or consistently. (T. 31)

The Petitioner testified that On December 18, 2024, he was operating a stopped IDOT truck hauling an attachment to direct traffic, when a distracted driver ran into the back of his vehicle. (T. 13) The Petitioner viewed five photographs of the vehicles after the wreck and identified the white box truck that struck his vehicle and the orange IDOT truck he was operating. (PX2, T. 14-15). The Petitioner said the box truck was traveling approximately 80 mph at the time of impact, and the impact forced his vehicle forward into the guardrail as depicted in the photos and the

Illinois Traffic Crash Report. (PX1, T. 15-16). The Petitioner said he immediately had neck and back pain as well as numbness, pins and needles sensations in his legs. (T. 17-18)

The Petitioner testified he was not aware of any pre-existing condition or degenerative illness affecting his spine and did not have neck or spine pain prior to the accident. (T. 33)

The Petitioner was transferred from the accident scene by ambulance to Fayette County Hospital. (T. 18, PX4) He had a laceration and swelling above his right eye and complained of headache, right knee/leg pain, upper posterior neck pain and lower back pain. (PX4) CT scans of his cervical spine, thoracic spine, lumbar spine, brain, chest, abdomen and pelvis were unremarkable, as were x-rays of his right leg. (Id.) Dr. Alex Merlo diagnosed whiplash and right leg contusion, prescribed ibuprofen, advised the Petitioner to see his primary care provider and ordered him off work through December 20, 2024. (Id.)

The Petitioner saw Advanced Practice Registered Nurse Tammy Sasse, at Hospital Sisters Health System, on December 19, 2024, and complained of neck pain radiating to his left shoulder blade, a knot to his left lower flank area, lower back pain and anterior right lower leg pain. (PX5) A physical exam showed a left low back contusion and a right anterior lower leg contusion that were tender. (Id.) APRN Sasse diagnosed neck pain, acute left-sided low back pain without sciatica and right lower leg pain and swelling. (Id.) She prescribed a muscle relaxer, recommended use of over-the-counter anti-inflammatories and ordered cervical and lumbar spine MRIs. (Id.) She stated that the Petitioner could undergo chiropractic care if his symptoms persisted and gave light-duty work restrictions. (Id.)

The MRIs were performed on January 2, 2025, at HSHS St. Anthony's Memorial Hospital. (PX6) The cervical spine MRI showed pathology at multiple levels including degenerative disc disease. (Id.) The lumbar spine MRI also showed pathology at multiple levels including disc bulges

at all levels from L1-S1 and a disc extrusion and moderate to severe bilateral neural foraminal stenosis at L5-S1. (Id.)

The Petitioner started chiropractic treatment on January 10, 2025, with Dr. Kyle Hammerschmidt at Stanfield Chiropractic. (PX7) He complained of pain in the posterior cervical, left and right lumbar, lumbar, left sacroiliac, left and right posterior pelvis/hip, sacral and right sacroiliac. (Id.) Dr. Hammerschmidt diagnosed dysfunction of those areas and provided treatment including chiropractic manipulation, electric stimulation and therapeutic exercise training. (Id.)

The Petitioner returned to APRN Sasse on January 16, 2025, to address cellulitis of the right leg caused by the accident. (PX5)

The Petitioner testified he was terminated by the Respondent on February 3, 2025. (T. 22) He said the Respondent was accommodating his restrictions up until his termination. (T. 23) He said that his medical care providers continued to impose light duty work restrictions on and after February 3, 2025, and that he had not worked since that time. (T. 23-24)

On February 13, 2025, the Petitioner saw APRN Sasse and reported that his neck and upper back pain were improving with chiropractic care, but he had not experienced relief of his low back pain. (Id.) APRN Sasse recommended a neurosurgery consultation and made a referral for physical therapy. (Id.)

On February 24, 2025, the Petitioner presented to Nurse Practitioner Julie Coenen, at Missouri Baptist Medical Center Neurosurgery. (PX8) He complained of ongoing bilateral low back pain, left worse than right, since the accident that would radiate into his buttocks, hamstrings, calves and feet, with the left greater than right. (Id.) NP Coenen took X-rays and reviewed the MRIs. (Id.) She diagnosed bilateral lumbar radiculopathy, lumbar stenosis without neurogenic claudication, acute bilateral low back pain with bilateral sciatica, low back pain, neck pain on the

left side and pain and swelling of the right lower leg. (Id.) She recommended physical therapy, dry needling, bilateral transforaminal epidural steroid injections, a nerve medication and a muscle relaxant. (Id.) She stated that the Petitioner did not have any surgical pathology at that time. (Id.) She imposed light duty work restrictions until he underwent the injections. (PX8 and PX13)

The Petitioner continued chiropractic treatment. (PX7) By March 3, 2025, he reported his neck felt “much better”, but he continued to report ongoing low back symptoms. (Id.)

On April 3, 2025, the Petitioner presented to Dr. Arash Sayari at Midwest Orthopedics at Rush for a Section 12 examination and reported that his neck pain had resolved, but he continued to experience left-sided low back pain. (RX5) Dr. Sayari took a history from the Petitioner and reviewed the ambulance report, Fayette County Hospital emergency room notes, APRN Sasse’s records, Dr. Hammerschmidt’s records and the MRIs. (Id.) He said the lumbar MRI showed mild degenerative disc disease from L4-S1, no acute disc herniation and a small disc bulge at L5-1 that was noncompressive of any of the neural elements. (Id.) A physical examination showed reduced range of motion in the lumbar spine, tenderness to palpation over the left paraspinal muscles and a negative straight leg raise test. (Id.)

Dr. Sayari diagnosed a lumbar sprain/strain and a resolved left cervical radiculitis, which he said were related to the work accident. (Id.) He said all medical treatment to date was reasonable and necessary and recommended that the Petitioner should transition from the nerve medication to an anti-inflammatory medication. (Id.) He said the Petitioner did not demonstrate signs of symptom magnification. (Id.) He opined that the Petitioner did not need further medical treatment at that time and that he had reached MMI around mid-March 2025. (Id.)

On May 27, 2025, the Petitioner presented to Dr. Matthew F. Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, with a chief complaint of central low back pain

predominantly to the left side and pain in the left buttock, left hip and down to the left posterior thigh, calf and heel. (PX9) Dr. Gornet reviewed prior care records and Dr. Sayari's report. (Id.) He noted that the Petitioner did not have a history of any prior problems with his back or neck. (Id.) Dr. Gornet's physical exam revealed that the Petitioner weighed 429 pounds, had decreased left ankle reflex and decreased extensor hallucis longus muscle dorsiflexion and plantar on the left compared to the right. (Id.)

Dr. Gornet reviewed the MRIs and said they were of poor quality. (Id.) He said the lumbar MRI showed a central annular tear at L5-S1, central beaking at L5-S1, a small central fragment at L5-S1 and a small central protrusion at L4-5. (Id.) Dr. Gornet had the Petitioner undergo another lumbar spine MRI that day at MRI Partners of Chesterfield and said it showed central disc pathology at L4-5 and L5-S1, including an obvious disc tear at L5-1 on the left side, a central disc fragment slightly to the left at L5-S1 and a similar protrusion at L4-5. (Id.) Dr. Gornet diagnosed disc injury at L4-5 and L5-S1. (Id.) He imposed light duty work restrictions, stopped the nerve medication prescription and prescribed an anti-inflammatory and muscle relaxant. (Id.) He advised the Petitioner to lose weight and contact his primary care provider to see if he could begin GLP-1 medication. (Id.) He referred the Petitioner for epidural steroid injections on the left L4-5 and L5-S1. (Id.) He opined that the Petitioner's current symptoms and requirement for treatment were causally connected to the December 18, 2024, accident. (Id.)

The last office visit notes by Stanfield Chiropractic on June 2, 2025, appeared to be a repeat of the notes recorded since March 3, 2025. (PX7)

Dr. Helen Blake, a pain management specialist at United Physicians Group, performed the injection at L5-S1 on June 2, 2025, and the injection at L4-L5 on June 23, 2025. (PX11) The Petitioner testified the injections he underwent helped for a short period of time. (T. 23)

Dr. Gornet testified consistently with his records at an evidence deposition on July 10, 2025. (PX12) He said the Petitioner's physical exam findings were consistent with L5-S1 nerve irritation. (Id.) Dr. Gornet opined that the annual tears at L4-5 and L5-S1, particularly the tears on the left side, were caused by the work accident because the Petitioner did not have any prior problems of significance before the accident, and the pathology on MRI correlated well with The Petitioner's subjective complaints. (PX12)

Dr. Gornet stated that with the improvement the Petitioner had from the injections, he would recommend surgery at L4-5 and L5-S1 if the Petitioner lost weight and remained symptomatic. (Id.) He said the Petitioner needed to weigh around 300 pounds before he would proceed with further treatment. (Id.) He said the proposed surgery would be reasonable, necessary and causally related to the work accident, based on his treatment of similar patients that have had good results with return to full duty work and based on the mechanism of injury being a severe wreck followed by consistent and unrelenting symptoms. (Id.) Dr. Gornet criticized Dr. Sayari's opinion that the Petitioner reached MMI because he was still significantly impaired. (Id.) He said Dr. Sayari's diagnosis of lumbar strain was inconsistent with the Petitioner's pathology and length of time of his symptoms. (Id.)

On cross-examination Dr. Gornet agreed that the Petitioner had pre-existing degenerative disc disease in his lumbar spine but did not agree that this was the source of the Petitioner's symptoms, as he was symptom-free before the accident. (Id.) He said degenerative disc disease would have made the Petitioner's discs weaker and more susceptible to injury. (Id.) He also did not believe morbid obesity would cause the Petitioner's symptoms. (Id.)

The Petitioner returned to Dr. Gornet on August 4, 2025, and had lost 15 pounds. (PX9) He reported that the recent injections, especially the L5-S1 injection, had improved his symptoms.

(Id.) Dr. Gornet reiterated his opinion that the Petitioner had discogenic pain from L4-5 and L5-S1 and advised the Petitioner he needed to reach 300 pounds before he would order a CT discogram. (Id.) Dr. Gornet continued light duty restrictions and the prescribed medications. (Id.)

The Petitioner testified that he could not get on the GLP-1 medication because he could not afford the tests that APRN Sasse ordered to see if he was a candidate for such medication and could not afford the medication even if it were prescribed as he was without health insurance. (T. 21) The Petitioner said he wanted to use GLP-1 medication and that he had already lost 40-45 pounds since Dr. Gornet's recommendation. (T. 22-23)

Dr. Sayari testified consistently with his report at a deposition on September 22, 2025. (RX6) He said the Petitioner would have been at more risk of injury in a motor vehicle accident because of his obesity. (Id.) He said a lumbar spine strain, which he diagnosed in the Petitioner normally requires 4-12 weeks of care to resolve. (Id.) He said the Petitioner did not require epidural steroid injections or other treatment, as he had no symptoms of a lumbar radiculopathy and had a normal neurologic examination. (Id.)

On cross-examination Dr. Sayari said the Petitioner's current symptoms were still causally related to the work accident even after the MMI date he listed in his report, but he simply did not believe the Petitioner required further care. (Id.) He agreed that a pre-existing condition can be asymptomatic and become symptomatic after trauma. (Id.) He acknowledged that he had not reviewed the traffic crash report, photographs of the vehicles involved in the wreck, chiropractic care records after March 3, 2025, NP Coenen's records, Dr. Gornet's records nor the second lumbar spine MRI report or imaging. (Id.)

The Petitioner testified he currently has low back pain that affects his ability to bend over, pain with standing for long periods of time, pain when sitting in chairs without significant padding,

reduced ability to lift weight and numbness/pins/needles sensation in his legs. (T. 24-25) He said these symptoms are constant. (T. 27) He said his neck pain has gone away. (T. 25)

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 and his reports and testimony to be consistent. None of the medical providers found him to be dishonest or malingering.

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).

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. Gornet and Dr. Sayari agreed that the Petitioner had pre-existing degenerative disc disease and that the Petitioner's current lumbar spine symptoms are causally related to the work accident. The doctors disagree on whether the Petitioner has reached MMI and whether further treatment is necessary. Dr. Sayari believed the Petitioner suffered only a lumbar strain and was at MMI at the time of his examination.

The Arbitrator finds Dr. Gornet's opinions to be more persuasive than Dr. Sayari's. Dr. Gornet had the benefit of reviewing more materials than Dr. Sayari, especially the second MRI, which was of better quality than the first and showed additional or clearer pathology than could be seen on the first. In addition, Dr. Sayari stated that the lumbar strain he diagnosed should have lasted more than 12 weeks, which is not the case. The Petitioner continued to have symptoms nearly a year after the accident. Dr. Gornet's opinions are better supported by the medical evidence and the Petitioner's ongoing symptoms. The Arbitrator also gives more weight to Dr. Gornet's opinions because, as the Petitioner's treating physician, he has become more familiar with the Petitioner and his condition.

The circumstantial evidence supports a finding of causation. The Petitioner was able to perform manual duties before the accident, but that ability decreased after the accident.

Based on the foregoing conclusions, the Arbitrator finds The Petitioner's current condition of ill-being in his lumbar spine is causally related to the December 18, 2024, work accident.

Issue G: What were The Petitioner's earnings?

The disputed issue herein is whether the Petitioner's overtime earnings should be included in average weekly wage (AWW) calculation. The parties agreed that if overtime earnings were

included, then the Petitioner's AWW would be \$1,339.20, and if overtime earnings were not included, then the Petitioner's AWW would be \$1,266.06.

Pursuant to § 10 of the Act, Average Weekly Wage “shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee’s last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52...” 820 ILCS 305/10.

The appellate court has defined overtime as including “those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week.” *Airborne Express, Inc. v. Ill. Workers' Comp. Comm'n*, 372 Ill. App. 3d 549, 554 (1st Dist 2007) In 2011, the appellate court emphasized that the exclusions to the definition of overtime are exclusive rather than inclusive. *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427 (1st Dist. 2011). “Those hours which an employee works in excess of his regular weekly hours of employment are not considered overtime within the meaning of section 10 and are to be included in an average-weekly-wage calculation if the excess number of hours worked is consistent or if the employee is required to work the excess hours as a condition of his employment.” (emphasis in original) *Id.* at 436. See also *Arcelor Mittal Steel v. Ill. Workers' Comp. Comm'n*, 2011 Ill.App. (1st) 102180WC, 961 N.E.2d 807, 356 Ill.Dec. 418, and *Kawa v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 120469WC, 991 N.E.2d 430, 2013 Ill. App. LEXIS 353, 372 Ill. Dec. 123.

However, in a 2015 case, the appellate court cited *Airborne Express* as holding: “Although overtime wages are generally excluded from the calculation of an employee's compensation, an exception exists where the overtime hours are consistent and required by the employer.” (emphasis

added) *S&C Elec. Co. v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 141057WC, ¶43. The court did not address the element of consistency but affirmed the Commission's adoption and affirmation of the Arbitrator's decision finding that the record was "devoid of ample evidence to conclude that any time worked over 8 hours (was) mandatory." *Id.* at ¶44. Because the appellate court did not explain why the requirement for including overtime in an average weekly wage was that the hours are consistent **and** mandatory – as opposed to consistent **or** mandatory – this Arbitrator will follow the verbiage of *Airborne Express* and the other cases cited above and determine whether the overtime worked by the Petitioner was consistent **or** mandatory.

The Arbitrator adds that there have been several Commission cases as late as 2025 affirming Arbitrator decisions that cited the case law on overtime as stating that the test is consistent **or** mandatory. See *Branon v. State of Illinois*, 25 IWCC 0453; *Young v. State of Illinois*, 25 IWCC 0216; *Nieves v. Evans Electric*, 25 IWCC 0211; and *Panameno v. Poly One*, 25 IWCC 0166.

The un rebutted testimony of the Petitioner's was that although his overtime was inconsistent, it was mandatory. Therefore, the Arbitrator finds the overtime earnings should be included in the Petitioner's AWW, which the Arbitrator finds to be is \$1,339.20.

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

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

Based on the findings above regarding causation, Dr. Sayari's opinion that treatment rendered until his examination was reasonable and necessary and Dr. Gornet's opinions, the Arbitrator finds that medical services provided were reasonable and necessary. The Respondent

has not paid all appropriate charges. Therefore, the Respondent shall pay the medical expenses as listed in Petitioner's Exhibit 14, as provided in Sections 8(a) and 8.2 of the Act.

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

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

Dr. Sayari believed the Petitioner did not need further medical treatment. Based on the findings above regarding causation, the Arbitrator relies on Dr. Gornet's opinions and finds that further treatment is necessary to diagnose, relieve or cure the effects of the Petitioner's injury.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Gornet, specifically: weight loss treatment to include GLP-1 medication and testing required for prescription of such medication; the CT discogram; and lumbar spine surgery at Dr. Gornet's discretion. The Respondent shall authorize and pay for such treatment.

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

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

The Respondent disputed entitlement to TTD benefits after April 3, 2025, when Dr. Sayari found the Petitioner at MMI and stated that the Petitioner could work without restrictions. Dr. Gornet believed restrictions were appropriate. For the reasons stated above regarding causation, the Arbitrator gives greater weight to the opinions of Dr. Gornet. The Respondent terminated the Petitioner's employment on February 3, 2025, after having accommodated his restrictions.

Therefore, the Respondent shall pay The TTD benefits of \$892.80/week for 42-4/7ths weeks, commencing December 19, 2024, through December 27, 2024, and from February 4, 2025, through November 19, 2025, as provided in Section 8(b) of the Act. The Respondent shall receive a credit of \$420.14 for TTD benefits paid and credit for PPD advances.

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	25WC025250
Case Name	Christine Garner v. State of Illinois - Alton Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0188
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Laura Cole
Respondent Attorney	Casey Fitzgerald

DATE FILED: 6/23/2026

/s/ Carolyn Doherty, Commissioner

Signature

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

June 23, 2026

d: 06/17/26

CMD/kcb

045

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC025250
Case Name	Christine Garner v. State of Illinois - Alton Mental Health Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Laura Cole
Respondent Attorney	Casey Fitzgerald

DATE FILED: 1/20/2026

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



JANUARY 20 2026

/s/ William Gallagher, Arbitrator

Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF JANUARY 13 2026 3.49%

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)

Christine Garner
 Employee/Petitioner

Case # 25 WC 25250

v. Consolidated cases: n/a

State of Illinois-Alton 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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on December 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. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

ICArbDec19(b) 2/10 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On the date of accident, August 16, 2025, 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 \$63,986.26; the average weekly wage was \$1,230.51.

On the date of accident, Petitioner was 59 years of age, married with 0 dependent child(ren).

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

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

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

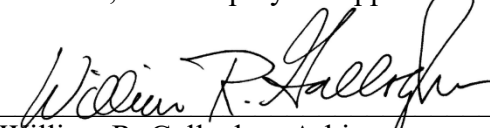
ORDER

Respondent shall pay temporary total disability benefits of \$820.34 per week for 17 1/7 weeks commencing August 17, 2025, through December 15, 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.



 William R. Gallagher, Arbitrator

January 20 2026

Evidentiary Ruling

At trial, Respondent's Exhibit List itemized six Exhibits. Petitioner's counsel had no objection to Respondent's Exhibit 1 through 5 and they were received into evidence. Respondent's Exhibit 6 was a video of the accident which was obtained on August 16, 2025. Respondent's counsel did not have a copy of Exhibit 6 to tender at the time of trial, but it was provided to the Arbitrator within a day or two.

At trial, counsel for Petitioner objected to Respondent's Exhibit 6 being received into evidence on the basis that there was a lack of foundation and no authentication. At trial, there was no supportive testimony regarding Respondent's Exhibit 6. Accordingly, the Arbitrator sustains Petitioner's counsel's objection and Respondent's Exhibit 6 is not received into evidence.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on August 16, 2025. According to the Application, Petitioner sustained an injury to her "Left hip" as a result of a "Trip and fall" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of temporary total disability benefits. Counsel for Petitioner and Respondent agreed to reserve the issue of liability for medical bills for a future trial. Respondent disputed liability on the basis of accident and causal relationship. The temporary total disability benefits sought by Petitioner were 17 1/7 weeks, commencing August 17, 2025, through December 15, 2025 (date of trial) (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in October, 2022, and worked as a Mental Health Technician. Petitioner worked the midnight shift and her job duties consisted of checking on patients every 15 minutes. Petitioner was required to walk down halls and check the doors of patients' rooms as well as the patients.

Petitioner testified that at approximately 11:10 P.M. on August 16, 2025, she was walking down the hall and one of her feet got stuck on the floor because of a sticky substance on the floor. Petitioner described it as feeling like she had stepped on dried syrup. As a result of her foot getting stuck, Petitioner fell forward and sustained an injury to her left hip.

Petitioner testified she experienced an immediate onset of pain in her left hip. She attempted to get up, but was unable to do so. She used her walkie-talkie and called for help. Another employee responded, but was unable to get Petitioner up. More employees were called and they were able to get Petitioner up off the floor, but she was unable to put any weight on her left leg.

Petitioner was taken by ambulance to Alton Memorial Hospital where she was seen in the ER. According to the ER records, Petitioner's "...shoe got trapped and made her fall forward" and then she was "walking her shoe got stuck and caused her to fall." An x-ray of Petitioner's left hip was obtained which revealed degenerative changes. A CT scan of Petitioner's left hip was performed which revealed a nondisplaced fracture of the posterior acetabulum (Petitioner's Exhibit 1). Petitioner was then transferred to Barnes Jewish Hospital.

When Petitioner was admitted to Barnes Jewish Hospital on August 17, 2025, the history in the record of that date stated that "Patient reports that she slipped on wet floor and landed on her left knee and was unable to ambulate afterwards." On that same day, Petitioner was evaluated in an acute surgery consultation. The history in that record was that "Pt stated she was walking and her leg got stuck and twisted the wrong way causing her to fall." Again, on that same day, Petitioner was seen for an orthopedic consultation. The history in that record was "...same level fall after her foot caught on a sticky floor at work." It was determined Petitioner was not a candidate for surgery and she was discharged (Petitioner's Exhibit 3).

Petitioner was subsequently evaluated by Dr. Jenna-Leigh Wilson, an orthopedic surgeon. When Dr. Wilson saw Petitioner on September 12, 2025, it was noted Petitioner sustained a "...left acetabular fracture s/p ground level fall." Dr. Wilson ordered physical therapy and authorized Petitioner to be off work (Petitioner's Exhibit 2).

When Petitioner was seen at Athletico Physical Therapy on September 25, 2025, the history in that record was that Petitioner "...broke her hip last month while walking at work because her foot got stuck to floor resulting in her falling to the floor." (Petitioner's Exhibit 2). Petitioner testified she has continued physical therapy and it has helped, but she has not been released to return to work.

On August 21, 2025, the Petitioner signed an Employee's Notice of Injury in which she described the circumstances of the accident. At trial, Petitioner stated she signed the report, but it was completed by another employee who incorrectly indicated the date of accident to be August 15, 2025. In respect to the circumstances of the accident, the report indicated Petitioner was walking down the hall when her shoe got stuck on the floor which caused her to fall forward injuring her left hip (Petitioner's Exhibit 4).

Respondent tendered into evidence a witness statement dated September 15, 2025, which was prepared and signed by Amanda Hooper, an employee of Respondent. In that document, Hooper stated it was her job to mop the halls on Tuesdays and Thursdays, but she was not working on Thursday, August 14. She could not recall if she mopped the floor where Petitioner fell that week or not. Hooper indicated it was her practice to walk down the hall after it was dry to ensure that the floor was not slick or sticky (Respondent's Exhibit 2).

At trial, Hooper's testimony was consistent with the statement she prepared. She testified her mopping does not leave a residue on the floor which would make it sticky. However, she also stated that MHT's have access to the mops and do mop floors on Saturdays. The day Petitioner sustained the accident, August 16, 2025, was a Saturday.

Respondent tendered into evidence four photos of the hall where Petitioner sustained the fall which were taken on September 5, 2025, approximately three weeks post accident. The caption of Picture #4 noted there were no visible floors defects, the floor was clean and smooth to the touch, and, if the person who took the photos did not pick up their feet, their shoes would squeak (Respondent's Exhibit 1).

Petitioner testified she had no left hip problems prior to sustaining the accident and she has not been able to return to work. She continues to be treated by Dr. Wilson.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on August 16, 2025, and her current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes following:

There was no dispute Petitioner's job duties required her to walk down halls to check on doors/patients.

Petitioner immediately reported the accident to Respondent shortly after it occurred and an Employee's Notice of Injury was prepared which described the circumstances of the accident.

Petitioner provided consistent histories of the accident to all of the medical providers who treated her.

Respondent's witness, Amanda Hooper, testified she mopped the floor on Tuesdays and Thursdays, but did not work on Thursday, August 14, 2025. While she testified that, after she mopped the floor, and it would not contain any residue which would cause it to be slick/sticky, she last mopped the floor on Tuesday, August 12, 2025, four days prior to Petitioner sustaining the accident. The Arbitrator finds Hooper could not have any knowledge of the condition of the floor on August 16, 2025, the date Petitioner sustained the fall. At best, the testimony of Hooper has minimal probative value.

The photos of the floor tendered by Respondent were taken on September 5, 2025, approximately three weeks post accident. These photos cannot depict the condition of the floor at the time Petitioner sustained the accident. The Arbitrator finds them to lack any probative value.

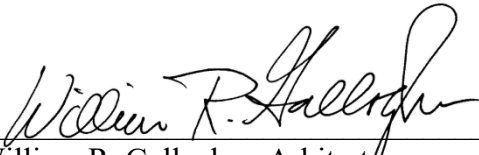
Petitioner credibly testified she had no left hip symptoms prior to sustaining the accident of August 16, 2025.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 17 1/7 weeks, commencing August 17, 2025, through December 15, 2025.

In support of this conclusion the Arbitrator notes the following:

Petitioner has been receiving medical treatment and has not been released to return to work.



William R. Gallagher, Arbitrator

January 20 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC015948
Case Name	Robert D. Sanders v. Flanders
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0189
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Brien DiNella
Respondent Attorney	Jeffrey Gibellina

DATE FILED: 6/24/2026

/s/Marc Parker, Commissioner

Signature

15 WC 015948

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert D. Sanders,

Petitioner,

vs.

NO: 15 WC 015948

Flanders,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 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.

15 WC 015948

Page 2

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$63,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 24, 2026

MP:yl

o 6/11/26

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	15WC015948
Case Name	Robert D Sanders v. Flanders
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Brien DiNella
Respondent Attorney	Jeffrey Gibellina

DATE FILED: 11/3/2025

/s/Edward Lee, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 28 2025 3.64%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Robert D. Sanders

Employee/Petitioner

v.

Flanders

Employer/Respondent

Case # **15** WC **015948**

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 **Joliet**, on **August 13, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On 4/24/2015, 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.

In the year preceding the injury, Petitioner earned \$30,183.40; the average weekly wage was \$580.45.

On the date of accident, Petitioner was 40 years of age, married with 0 dependent children.

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

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

Respondent shall be given a credit of \$4,346.75 for TTD from 4/27/15 through 7/15/15, \$00 for TPD, \$00 for maintenance, and \$9,205.44 for medical paid to date, for a total credit of \$13,552.19.

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

ORDER

The petitioner sustained an accident at the respondent on April 24, 2015.

The petitioner reached maximum medical improvement for the right shoulder and could work full duty on May 5, 2016. The respondent is liable for right shoulder medical treatment and TTD benefits from April 25, 2015, through May 5, 2016 (less any payments previously made by respondent).

The Petitioner reached maximum medical improvement for the lumbar spine and could work full duty on September 21, 2016 when released by Dr. Jimenez. The Respondent is liable for lumbar spine medical treatment and TTD benefits from April 25, 2015, through September 21, 2016 (less any payments previously made by respondent).

Respondent shall pay the following medical bills: Equian, \$29,010.55; ATI physical therapy, \$15,663.99; Oak Orthopedics, \$794.75; Riverside Medical Center, \$2,145.00.

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

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

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

Edward Lee
Signature of Arbitrator

NOVEMBER 3 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT D. SANDERS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 15WC015948
	)	
FLANDERS,	)	
	)	
Respondent.	)	

STATEMENT OF FACTS

On Friday, April 24, 2015, per the testimony of petitioner Robert Sanders (hereinafter “the petitioner”) at the August 13, 2025, hearing, the petitioner was moving wall fiberglass material between semi-trailers for respondent Flanders (hereinafter “respondent”). *Trial trans 12*. The petitioner stated that the bags of fiberglass weighed between 75 and 100 pounds. *Id.* The petitioner was loading and unloading the fiberglass bags with a partner. *Id.* 12-13. The petitioner engaged in this activity for 12 hours letting his supervisor know within the first 5-6 hours that he was in discomfort. *Id.*

On April 26, 2015, the petitioner presented Dr. Scott Smithgall at Riverside Medical Center Emergency Department with “back pain” and “soft tissue injury to right shoulder.” *Pet. Ex. 1, 446*. The petitioner related, per notes, that “onset 2 days ago. Pt was loading and unloading trailers, carrying, stooping, bending and pulling 100lbs at a time at work. No injury, but since Friday he has been in pain.” *Id.* at 447. The petitioner was to follow up if symptoms worsened. *Id.* at 452.

On May 4, 2015, the petitioner presented to Oak Orthopedics and was seen by treater Dr. Carey Ellis (primary care sports medicine physician) for his right shoulder and lumbar spine. *Pet. Ex. 5, 153*. The petitioner related that on April 25, 2015, he was doing a significant amount of heavy lifting overhead including lifting 100-pound bags. *Id.* at 154. Dr. Ellis administered an intraarticular cortisone injection into the right shoulder. *Id.* at 155. The petitioner was diagnosed with right shoulder impingement syndrome and low back strain. *Id.* at 156. In addition to Flexeril and ibuprofen, the petitioner was prescribed Tramadol (narcotic). *Id.*

The petitioner was prescribed opioids/narcotics by treaters varying in dosage from May 4, 2015, to present. See *Pet. Ex. 6* and see *R. Ex. 18; Trial trans 53*.

On May 8, 2015, the petitioner was seen by Dr. Ellis at Oak Orthopedics. *Pet. Ex. 5, 150*. Dr. Ellis ordered an MRI of the right shoulder and increased dosage for Norco to treatment lumbar discomfort. *Id.* 152.

On May 19, 2015, the petitioner presented to Oak Orthopedics and was seen, again, by Dr. Ellis. *Pet. Ex. 5, 146*. The diagnoses were right shoulder impingement syndrome, avascular necrosis greater tuberosity, lumbar degenerative joint/disc disease at L4-L5 and L5-S1, and disc protrusion at L4-L5. *Id.* at 48. Dr. Ellis prescribed Norco 10/325 and referred petitioner to Dr. Michael Corcoran (orthopedic surgeon) for the right shoulder and Dr. Juan Palma-Santiago (pain management). *Id.*

On May 29, 2015, the petitioner was seen by treater Dr. Michael Corcoran (orthopedic surgeon) for right shoulder. *Pet. Ex. 5, 143*. The report states that petitioner injured his right shoulder at work “loading 100-pound bags for several days.” *Id.* at 144. The petitioner related that cortisone injections helped for a couple of days. *Id.* Dr. Corcoran reviewed an MRI of the shoulder that may have shown avascular necrosis and mild AC arthropathy. *Id.* at 145. Dr. Corcoran ordered a CT of the right shoulder. *Id.*

On June 4, 2015, petitioner presented for an office visit with Dr. Juan Santiago-Palma (pain management) for his lumbar spine. *Pet. Ex. 5, 129*. They discussed results of MRI of lumbar spine and opted to proceed with an epidural steroid injection using bilateral S1 foraminal approach. *Id.* at 131. Dr. Santiago-Palma continued to prescribe hydrocodone 10/325. *Id.*

The petitioner underwent a course of physical therapy for his lumbar spine at ATI Physical Therapy from June 25, 2015, through August 4, 2015. *See Pet. Ex. 8.*

half days. There is no particular incident or event. There is no onset of radicular symptoms any time after the injury.” Id. Dr. Lami adds that petitioner has no clinical symptoms corresponding to the disc herniation including no radiculopathy or neurological deficit. *Id.* at 4-5. Dr. Lami recommends a short course of physical therapy for the lumbar spine. *Id.* at 5. After completion of physical therapy, petitioner may return to full-duty work per Dr. Lami. *Id.*

On July 18, 2015, the petitioner underwent a CT scan of the right upper extremity showing, per the radiologist, “no acute osseous pathology. No CT findings to suggest avascular necrosis.” *Pet. Ex. 1, 392*. The radiologist also noted possible rotator cuff pathology. *Id.*

On July 22, 2015, the Petitioner followed up with Dr. Corcoran for the right shoulder. *Pet. Ex. 5, 126*. Dr. Corcoran noted that the CT scan of the right shoulder “really did not reveal any rotator cuff pathology.” *Id.* at 127. Dr. Corcoran planned to proceed with a right shoulder scope

“as much for diagnostic purpose and definitive treatment, evaluate for any evidence of any avascular necrosis of the humeral head as well as he [sic] needs distal clavicle resection.” Id.

On July 23, 2015, Dr. Santiago-Palma performed a transforaminal lumbar epidural steroid injection using fluoroscopic guidance. *Pet. Ex. 1, 373.*

On August 4, 2015, the petitioner presented to Dr. Ellis for pre-operative clearance (right shoulder scope following day). *Pet. Ex. 5, 124-125.*

On August 5, 2015, the petitioner underwent the following procedures performed by treater Dr. Michael Corcoran: right shoulder arthroscopy; chondroplasty of glenoid; chondroplasty of humerus; labral debridement anterior and posterior; debridement of bursal side tear of the rotator cuff; subacromial decompression consisting of bursectomy, acromioplasty, and CA ligament recession; distal clavicle resection. *Pet. Ex. 1, 254.* The post-operative diagnosis was *“questionable area of focal [avascular necrosis] over the greater tuberosity, some grade 3 chondromalacia in the humerus and glenoid; labral fraying anterior and posterior, and impingement syndrome as well as AC arthropathy.” Id.* During surgery, Dr. Corcoran noted *“There was no appreciable evidence of avascular necrosis.” Id. at 255.*

The petitioner underwent a course of post-operative physical therapy for his right shoulder at ATI Physical Therapy from August 6, 2015, through October 16, 2015. *See Pet. Ex. 8.*

On August 10, 2015, the petitioner underwent a lumbar transforaminal epidural steroid injection performed by treater Dr. Santiago-Palma that provided minimal relief. *Pet. Ex. 5, 121-122.* Dr. Santiago-Palma continued to prescribe hydrocodone 10/325. *Id. at 122.*

On August 14, 2015, the petitioner followed up with Dr. Corcoran 9 days after his right shoulder scope. *Pet. Ex. 5, 117.* Petitioner reported feeling much better than he had pre-operatively. *Id. at 118.* With regard to the right shoulder surgery performed on August 5, 2015, Dr. Corcoran noted he did not identify any avascular necrosis and that aspiration of shoulder per cytology was negative at time of surgery. *Id.*

On September 8, 2015, the petitioner followed up with Dr. Santiago-Palma for back pain, *“but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities.” Pet. Ex. 1, 18.* Dr. Santiago-Palma continued to prescribe hydrocodone 10/325 PRN and instructed petitioner not to use more than 3 tablets per day. *Id. at 19.* The petitioner underwent another bilateral L5 transforaminal injection that day. *Id.*

On September 11, 2015, the petitioner returned to Dr. Corcoran for an office visit. *Pet. Ex. 5, 103.* Dr. Corcoran reported *“range of motion improved dramatically, but [petitioner] still states*

he is still having pain.” Id. at 104. Due to the pain, the petitioner underwent an intraarticular cortisone injection into the right shoulder. *Id.*

On September 13, 2015, the petitioner was involved in an altercation at a bar when he was struck in his left eye by a beer bottle. *Pet. Ex. 1*, 82. The petitioner, per a CT scan taken that same day, sustained a “*ruptured left ocular globe and periorbital soft tissue hematoma and laceration with several small shards of foreign body within subcutaneous and deep muscular layers.*” *Pet. Ex. 1*, 110.

On October 8, 2015, petitioner underwent a transforaminal lumbar epidural steroid injection using fluoroscopic guidance administered by Dr. Santiago-Palma. *Pet. Ex. 1*, 65.

On October 15, 2015, the petitioner returned to Dr. Corcoran with complaints of severe right shoulder pain post-operatively. *Pet. Ex. 5*, 100-101. Dr. Corcoran ordered another MRI with IV contrast to compare with original MRI and continued petitioner on Norco. *Id.* at 101.

On October 21, 2015, the petitioner underwent an MRI of the right shoulder at Riverside Medical Center. *Pet Ex. 1*, 5-6. The radiologist found “*a lesion consistent with avascular necrosis along the lateral aspect of the humeral head demonstrates stable size since 5/14/15...no evidence of subchondral collapse or fragmentation.*” *Id.* at 6.

On October 29, 2015, the petitioner returned to Dr. Santiago-Palma at Oak Orthopedics. *Pet. Ex. 5*, 96. He noted petitioner obtained no improvement in low back pain after transforaminal epidural steroid injection. *Id.* at 98. Dr. Santiago-Palma referred petitioner to neurosurgeon Dr. Juan Jimenez. *Id.*

On November 5, 2015, due to continued right shoulder complaints, Dr. Corcoran referred petitioner to Dr. Tomasz Antkowiak for a second opinion. *Pet. Ex. 5*, 94.

On November 11, 2015, the petitioner presented to Dr. Tomasz Antkowiak (orthopedic surgeon) at Oak Orthopedics for the right shoulder. *Pet Ex. 5*, 90. Petitioner continued to report right shoulder pain. *Id.* at 91. On exam, Dr. Antkowiak reported that “*examination of the right shoulder shows pain that appears to be out of proportion with exam. The patient’s reactions to certain exam maneuvers are not always consistent. At times certain passive range of motion causes pain and other times it does not.*” *Id.* Dr. Antkowiak opines that the right shoulder surgery performed by Dr. Corcoran was “*done very technically well.*” *Id.* He reports that the AVN or avascular necrosis is stable and is unchanged from prior to surgery. *Id.* He adds that the AVN is not the source of pain. *Id.* Dr. Antkowiak, seeing no acute surgical injections, recommends anti-inflammatories and physical therapy among other conservative treatment. *Id.* Dr. Antkowiak, under the Plan section, adds “*Objectively I am not able to identify any specific isolated source of*

pain. He appears to have generalized pain through the shoulder girdle. Again, his exam is not always consistent from moment to moment. It is therefore difficult to pinpoint an anatomic location for his pain.” Id. He referred petitioner back to Dr. Corcoran. *Id.*

On December 10, 2015, the petitioner was seen by Dr. Corcoran. *Pet. Ex. 5, 87.* The petitioner followed up with persistent right shoulder pain. *Id.* at 88. Prior to the visit, petitioner was seen by Dr. Antkowiak by referral for a second opinion. *Id.* Dr. Antkowiak opined the AVN (avascular necrosis) lesion was stable and unchanged prior to surgery. *Id.* He did not see any acute surgical indications necessary. *Id.* Dr. Antkowiak did not think the source of pain was coming from the AVN. *Id.* He recommended anti-inflammatories and physical therapy for the right shoulder. *Id.* Dr. Corcoran administered the first Supartz injection that day. *Id.* at 89.

On December 16, 2015, the petitioner underwent a second Supartz injection into the right shoulder performed by Dr. Corcoran. *Pet. Ex. 5, 86.*

On that same, December 16, 2015, the petitioner was also seen by Dr. Jimenez. *Pet. Ex. 5, 160.* He recommended a L4-5 and L5-S1 TLIF with decompression from a left approach. *Id.* Dr. Jimenez continued to relate his understanding of the accident as occurring “*after unloading and reloading numerous 75-100 # bags of fiberglass from a truck over a 3-day weekend. Stating initial day, he had some low back discomfort that gradually worsened and the third day pain was intense.*” *Id.*

On January 14, 2016, the petitioner returned to Dr. Santiago-Palma for the lumbar spine. *Pet. Ex. 5, 76.* Dr. Santiago-Palma referenced an “*extensive discussion regarding pharmacological management of pain and medication side effects*” instructing the petitioner to use no more than 3 tablets per day of hydrocodone 10/325 per day. *Id.*

On February 22, 2016, the petitioner underwent the following procedures on the lumbar spine performed by neurosurgeon Dr. Juan Jimenez: L4-5 and L5-S1 transforaminal/posterolateral interbody arthrodesis; L4-5 and L5-S1 hemilaminectomy and facetectomy and removal of the pars interval particulars for neural element decompression; L4-S1 posterior instrumentation; L4-5 and L5-S1 placement of interbody device; use of intraoperative image guidance navigation; use of autograft. *Pet. Ex. 2, 76.* The post-operative diagnosis was herniated nucleus pulposus and mechanical type back pain. *Id.* Dr. Jimenez noted within *Indications for the Procedure* section that petitioner displayed “*minimal radicular-type pain and primarily axial type back pain.*” *Id.* at 77.

The petitioner underwent a course of post-operative lumbar physical therapy at RMC Westwood Medical Arts after the lumbar fusion. *See Pet. Ex. 6.*

On February 22, 2016, the petitioner returned to Dr. Corcoran and underwent another cortisone injection into the right shoulder. *Pet. Ex. 5, 75.*

On April 20, 2016, the petitioner returned to Oak Orthopedics and was seen by Dr. Timothy Friedrich, DPM, with bilateral foot pain. *Pet. Ex. 5, 56.* Dr. Friedrich diagnosed the petitioner with “*bilateral fee acquired hallux valgus, bilateral feel callus and bilateral foot pain.*” *Id.* a 58.

On May 5, 2016, the petitioner was seen again by Dr. Corcoran for the right shoulder. *Pet. Ex. 5, 43.* Dr. Corcoran related that the petitioner’s range of motion improved. *Id.* at 45. Dr. Corcoran recommended a repeat MRI of right shoulder due to subjective complaints but stated “*there is nothing I can offer [petitioner] surgically at this point.*” *Id.*

The petitioner continued to see Dr. Santiago-Palma post-operatively who consistently prescribed hydrocodone and gabapentin for his lumbar spine. *See Pet. Ex. 5.*

On August 10, 2016, the petitioner was seen again by Dr. Santiago-Palma for bilateral knee pain and diagnosed with bilateral patellar tendonitis. *Pet. Ex. 5, 9.*

On August 17, 2016, the petitioner returned to Dr. Lieber for a follow-up independent medical examination. *See R. Ex. 4.* Dr. Lieber, as part of his exam, reviewed, in part, May 5, 2016, X-rays of the right shoulder, the August 5, 2015, operative report, and the August 3, 2016, functional capacity evaluation. *Id.* at 3. Dr. Lieber maintained his opinion that petitioner should have reached maximum medical improvement for his right shoulder at the time of his initial exam in June 2015. *Id.* at 3-4. He opined that petitioner was capable of full-duty work. *Id.* at 4.

On August 30, 2016, the petitioner presented to Dr. Santiago-Palma and underwent another lumbar epidural steroid injection (bilateral S1 foraminal approach). *Pet. Ex. 5, 5.*

On September 28, 2016, the petitioner presented to Dr. Santiago-Palma to undergo a transforaminal lumbar epidural steroid injection using fluoroscopic guidance. *Pet. Ex. 5, 184-185.*

Within his October 5, 2016, narrative, treater Dr. Corcoran (ortho) for the right shoulder opined in response to whether any right shoulder pathology is related to the April 24, 2015, accident, “*it is very difficult to make that kind of determination. Avascular necrosis is usually not casually related to any sort of repetitive overhead type activity. It can obviously be exacerbated by that sort of activity, but it is usually not directly related to repetitive work type injury.*” *Pet. Ex. 6, 1.* Dr. Corcoran adds “*again it is difficult for me to determine if any of this is actually related to the work injury. I believe the surgical procedure is reasonable and necessary because he had persistent pain, and we had an equivocal diagnosis.*” *Id.* at 2.

Treater Dr. Jimenez, within his October 24, 2016, narrative, causally connects lumbar spine pathology to date of accident, based in part on his understanding that petitioner engaged in

“repeated lifting of heavy bags over three days.” Pet. Ex. 3, 2. Dr. Jimenez opined that as of September 21, 2016 – the petitioner’s final visit with Dr. Jimenez – that petitioner *“could meet all of his job requirements and therefore he was released to work without restrictions with follow upon [sic] an as needed basis.” Id.* Dr. Jimenez added that petitioner *“attained MMI, maximum medical improvement with an FCE showing full capacity, therefore no restrictions for his work are required.” Id.*

Three months later, on January 18, 2017, the petitioner presented to Dr. Jalaja Piska (pain management) for an initial office visit. *R. Ex. 18, 359.* Petitioner presented with right shoulder and lumbar back pain. *Id.* Petitioner added that he is undergoing surgery on both of his feet on February 16, 2017. *Id.* Dr. Piska wrote a prescription for narcotic hydrocodone-acetaminophen 10-325 mg. *Id.* at 360. Dr. Piska recommended pain medication and muscle relaxants due to likely inefficacy of injections given petitioner would be wearing a walking boot. *Id.* at 362.

On February 13, 2017, the petitioner underwent bilateral sacroiliac joint injection. *Pet. Ex. 10, 1.*

On February 16, 2017, the petitioner underwent left foot surgery including having toes broken and addressing bunions and calluses secondary to foot deformity. *R. Ex. 18, 347.*

On March 14, 2017, the petitioner saw Dr. Piska again. *R. Ex. 18, 347.* Dr. Piska recommended lumbar facet joint median branch blocks under fluoroscopy. *Id.* at 350.

On May 17, 2017, the petitioner returned to Dr. Piska. *R. Ex. 18, 339.* Dr. Piska continued to recommend lumbar branch blocks. *Id.* at 342.

On June 14, 2017, the petitioner returned to Dr. Piska. *R. Ex. 18, 335.* Dr. Piska continued to recommend lumbar branch blocks. *Id.* at 338.

On July 11, 2017, the petitioner returned to Dr. Piska. *R. Ex. 18, 331.* Dr. Piska continued to recommend lumbar branch blocks noting that petitioner never scheduled the same. *Id.* at 334. Dr. Piska continued to write prescriptions for hydrocodone-acetaminophen 10-325 mg. *Id.* at 331.

On August 18, 2017, the pet underwent lumbar diagnostic hardware injections at L3, L4, L5 bilaterally. *Pet. Ex. 10, 1.*

On September 5, 2017, the petitioner returned to Dr. Piska for an office visit. *R. Ex. 18, 323.* Petitioner related that the diagnostic lumbar branch blocks were not helpful. *Id.* Dr. Piska recommended bilateral sacroiliac joint injections. *Id.* at 325. Dr. Piska also recommended a trial spinal cord stimulator under fluoroscopy. *Id.* at 326. She continued to write prescriptions for hydrocodone-acetaminophen 10-325 mg. *Id.* at 323.

On March 6, 2018, the petitioner underwent left sacroiliac joint injection and lumbar facet joint medical branch blocks at left L5 and S1. *Pet. Ex. 10, 1.*

On March 27, 2018, the petitioner returned to Dr. Piska. *R. Ex. 18, 310.* The petitioner underwent sacroiliac injections two weeks prior. *Id.* Petitioner related that he is “scared” of undergoing trial spinal cord stimulator. *Id.* Dr. Piska continued to recommend trial spinal cord stimulator and referred petitioner to Dr. Mehta for psychological evaluation. *Id.* at 313.

On July 27, 2018, the pet underwent a trial spinal cord stimulator implantation. *Pet. Ex. 10, 1.*

On August 2, 2018, the petitioner returned to Dr. Piska. *R. Ex. 18, 294.* Dr. Piska referenced petitioner undergoing a trial spinal cord stimulator between last visit and this visit. *Id.* at 295. Dr. Piska noted that petitioner denied getting any pain relief from the spinal cord stimulator. *Id.* Petitioner was advised to continue home exercise and stretches. *Id.* Dr. Piska continued to recommend petitioner take hydrocodone-acetaminophen 10-325 mg. *Id.*

34.

On November 8, 2019, the petitioner presented to Dr. Piska and underwent bilateral sacroiliac joint injection. *Pet. Ex. 10, 1.*

Dr. Piska continued to consistently be prescribed narcotics including hydrocodone-acetaminophen and tramadol 10-325 mg from her first visit on January 18, 2017, to present. *See R. Ex. 18; see R. Ex. 20; Trial trans 53.*

The parties took the evidence deposition of Dr. Piska on March 4, 2022. *See Pet. Ex. 11.* Dr. Piska related no restrictions for shoulder or lumbar spine unless the petitioner is prescribed new medications at which point she would revisit restrictions. *Pet. Ex. 11, 27.* Dr. Piska never opined on general work restrictions for either the right shoulder or lumbar spine. *Id.* at 29, 36-37. The Arbitrator notes from Dr. Piska’s deposition that she did not treat Petitioner until 11 plus years after the accident and was treating the Petitioner for new symptoms in addition to alleged pain from the shoulder and low back. The Arbitrator found the doctor’s deposition testimony to be inconsistent and lacking in clarity and therefore, not persuasive.

. An April 5, 2024, letter from the SSA shows that as of beginning of December 2023, the petitioner was getting \$1,005.20 in monthly benefits. *R. Ex. 19, 20.*

At the August 13, 2025, hearing, the petitioner testified that he injured his right shoulder and lumbar spine on April 24, 2015, lifting for 12 hours at work. *Trial trans 30.* He added that he attempted to work the next day but was unable to and left work at that time. *Id.* that he continues to take hydrocodone 7/325 every 4 hours for pain. *Trial trans 23-24.* On cross examination, the

petitioner confirmed that he was first prescribed narcotics in the form of hydrocodone acetaminophen in May 2015 and that treaters continued to prescribe narcotics through 2016. *Id.* at 34-35. The petitioner added that from when he first saw Dr. Piska (pain) in January 2017 to present that Dr. Piska has regularly prescribed him narcotics. *Id.* at 53. Petitioner stated that he has not seen any of his treaters for the right shoulder and lumbar spine since 2016 (Dr. Santiago-Palma [pain], Dr. Corcoran [ortho-right shoulder], and Dr. Jimenez (neurosurgeon – spine). *Id.* at 44-45. The petitioner confirmed that he is a Medicare beneficiary dating back to 2017. *Id.* at 51. The petitioner has neither worked anywhere since Amazon nor has he looked for work. *Id.* at 53. Petitioner presented to hearing with a cane and sometimes also uses a walker “[b]ecause my knees, you know, it’s bad.” *Id.* at 27. He also stated, “I got pain anywhere,” which in the context of the question is construed as pain everywhere. *Id.* at 26. In response to where petitioner currently has pain, he related “hips, knees, back, shoulder, now this hip over here. I deal with pain on a daily basis...I had two knee surgeries, had my left knee...I had a full hip replacement.” *Id.* at 54.

C. THE PETITIONER SUSTAINED AN ACCIDENT ON APRIL 24, 2015, THAT AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT AT THE RESPONDENT.

The respondent, after the August 13, 2025, hearing, now stipulates to the claim that an accident occurred on April 24, 2015, at respondent.

For injuries to be compensable under the Illinois Workers’ Compensation Act, a claimant must show such injuries *arose out of and in the course of* his or her employment. *Caterpillar Tractor Co. v. Industrial Comm’n* (1989), 129 Ill.2d 52, 57. The phrase “in the course of” refers to the time, place and circumstances under which the accident occurred. *Id.* The fact that the injury arose in the course of employment is not sufficient, however; to be compensable, the injury must also *arise out of* the employment. *Orsini v. Industrial Comm’n* (1987), 117 Ill.2d 38, 45. “Arising out of” refers to the origin or cause of the accident and presupposes some causal connection between the employment and the accidental injury. *Chmelik v. Vana* (1964), 31 Ill.2d 272, 277. In other words, the injury must have its origin in some risk connected with or incident to the employment so as to create a causal connection between the employment and the injury. *Caterpillar Tractor Co.* at 58.

The Arbitrator finds that an accident arose out of and in the course of the petitioner’s employment on April 24, 2015. In support of this finding, the arbitrator gives weight to the petitioner’s testimony at the August 13, 2025, hearing (see *trial trans*) corroborated, by and large,

with medical records relating that he was lifting 75-100 pound fiberglass bags for about 12 hours at the respondent that day when he felt discomfort in his right shoulder and low back.

F. THE PETITIONER'S CURRENT CONDITIONS OF ILL-BEING ARE RELATED TO THE APRIL 24, 2015 ACCIDENT.

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). It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999).

RIGHT SHOULDER

The Arbitrator finds that there is a causal connection for the right shoulder and the April 24, 2015, accident. The Arbitrator finds that that the petitioner is entitled to medical and TTD benefits for the right shoulder through May 5, 2016 (last office visit with treater Dr. Corcoran).

Causation

On July 18, 2015, the petitioner underwent a CT scan of the right upper extremity showing, per the radiologist, “no acute osseous pathology. No CT findings to suggest avascular necrosis.” *Pet. Ex. 1*, 392. The radiologist also noted possible rotator cuff pathology. *Id.*

On July 22, 2015, the Petitioner followed up with Dr. Corcoran for the right shoulder. *Pet. Ex. 5*, 126. Dr. Corcoran noted that the CT scan of the right shoulder “really did not reveal any rotator cuff pathology.” *Id.* at 127. Dr. Corcoran planned to proceed with a right shoulder scope “as much for diagnostic purpose and definitive treatment, evaluate for any evidence of any avascular necrosis of the humeral head as well as he [sic] needs distal clavicle resection.” *Id.*

On August 5, 2015, the petitioner underwent the following procedures performed by treater Dr. Michael Corcoran: right shoulder arthroscopy; chondroplasty of glenoid; chondroplasty of humerus; labral debridement anterior and posterior; debridement of bursal side tear of the rotator cuff; subacromial decompression consisting of bursectomy, acromioplasty, and CA ligament recession; distal clavicle resection. *Pet. Ex. 1, 254*. The post-operative diagnosis was “*questionable area of focal [avascular necrosis] over the greater tuberosity, some grade 3 chondromalacia in the humerus and glenoid; labral fraying anterior and posterior, and impingement syndrome as well as AC arthropathy.*” *Id.* During surgery, Dr. Corcoran noted “*There was no appreciable evidence of avascular necrosis.*” *Id.* at 255.

On August 14, 2015, the petitioner followed up with Dr. Corcoran 9 days after his right shoulder scope. *Pet. Ex. 5, 117*. Petitioner reported feeling much better than he had pre-operatively. *Id.* at 118. With regard to the right shoulder surgery performed on August 5, 2015, Dr. Corcoran noted he did not identify any avascular necrosis and that aspiration of shoulder per cytology was negative at time of surgery. *Id.*

On November 5, 2015, due to continued right shoulder complaints, Dr. Corcoran referred petitioner to Dr. Tomasz Antkowiak for a second opinion. *Pet. Ex. 5, 94*.

On November 11, 2015, the petitioner presented to Dr. Tomasz Antkowiak (orthopedic surgeon) at Oak Orthopedics for the right shoulder. *Pet Ex. 5, 90*. Petitioner continued to report right shoulder pain. *Id.* at 91. On exam, Dr. Antkowiak reported that “*examination of the right shoulder shows pain that appears to be out of proportion with exam. The patient’s reactions to certain exam maneuvers are not always consistent. At times certain passive range of motion causes pain and other times it does not.*” *Id.* Dr. Antkowiak opines that the right shoulder surgery performed by Dr. Corcoran was “*done very technically well.*” *Id.* He reports that the AVN or avascular necrosis is stable and is unchanged from prior to surgery. *Id.* He adds that the AVN is not the source of pain. *Id.* Dr. Antkowiak, seeing no acute surgical injections, recommends anti-inflammatories and physical therapy among other conservative treatment. *Id.* Dr. Antkowiak, under the Plan section, adds “*Objectively I am not able to identify any specific isolated source of pain. He appears to have generalized pain through the shoulder girdle. Again, his exam is not always consistent from moment to moment. It is therefore difficult to pinpoint an anatomic location for his pain.*” *Id.* He referred petitioner back to Dr. Corcoran. *Id.*

On December 10, 2015, the petitioner was seen by Dr. Corcoran. *Pet. Ex. 5, 87*. The petitioner followed up with persistent right shoulder pain. *Id.* at 88. Prior to the visit, petitioner was seen by Dr. Antkowiak by referral for a second opinion. *Id.* Dr. Antkowiak opined the AVN

(avascular necrosis) lesion was stable and unchanged prior to surgery. *Id.* He did not see any acute surgical indications necessary. *Id.* Dr. Antowiak did not think the source of pain was coming from the AVN. *Id.* He recommended anti-inflammatories and physical therapy for the right shoulder. *Id.* Dr. Corcoran administered the first Supartz injection that day. *Id.* at 89.

On May 5, 2016, the petitioner was seen again by Dr. Corcoran for the right shoulder. *Pet. Ex. 5, 43.* Dr. Corcoran related that the petitioner's range of motion improved. *Id.* at 45. Dr. Corcoran recommended a repeat MRI of right shoulder due to subjective complaints but stated "*there is nothing I can offer [petitioner] surgically at this point.*" *Id.*

Lumbar Spine

The Arbitrator finds the petitioner sustained a lumbar injury as a result of the April 24, 2015, accident and reached maximum medical improvement for the same when he was released for work by Dr. Jimenez on September 21, 2016.

Causation

On May 4, 2015, the petitioner presented to Oak Orthopedics and was seen by treater Dr. Carey Ellis for, in part, the lumbar spine. *Pet. Ex. 5, 153.* The petitioner was diagnosed with, in part, low back strain. *Id.* at 156. I

Due to no relief from a series of lumbar epidural steroid injections from May 2015 through January 2016 (see *Pet. Ex. 1*), on February 22, 2016, the petitioner underwent L4-S1 fusion and decompression performed by neurosurgeon Dr. Juan Jimenez. *Pet. Ex. 2, 76.* The post-operative diagnosis was herniated nucleus pulposus and mechanical type back pain. *Id.* Dr. Jimenez noted within *Indications for the Procedure* section that petitioner displayed "*minimal radicular-type pain and primarily axial type back pain.*" *Id.* at 77.

Treater Dr. Jimenez, within his October 24, 2016, narrative, opines that as of September 21, 2016 – the petitioner's final visit with Dr. Jimenez – that petitioner "*could meet all of his job requirements and therefore he was released to work without restrictions with follow upon [sic] an as needed basis.*" *Id.* Dr. Jimenez added that petitioner "*attained MMI, maximum medical improvement with an FCE showing full capacity, therefore no restrictions for his work are required.*" *Id.*

The arbitrator finds that based on the above, the petitioner sustained a lumbar injury, requiring surgery and reached maximum medical improvement when released for work by Dr. Jimenez on September 21, 2016. for the same with a full-duty release at the conclusion of physical therapy on August 4, 2015.

J & K. PETITIONER IS ENTITLED TO MEDICAL SERVICES AS OUTLINED BELOW

As to right shoulder, based on the findings contained under Issue F above, the Arbitrator awards medical services from April 25, 2015, through May 6, 2016, minus payments previously made by respondent.

As to the lumbar spine, based on the findings contained under Issue F above, the Arbitrator awards medical services from April 25, 2015, through September 21, 2016 when Petitioner was released to work by Dr. Jimenez.

Accordingly, the Arbitrator orders the Respondent to pay the following medical bills pursuant to Section 8(a) of the Act and the Medical Fee Schedule:

Equian, \$29,010.55, ATI physical therapy \$15,663.99, Oak Orthopedics \$794.75 and Riverside Medical Center \$2,145.

L. PETITIONER IS ENTITLED TO TTD BENEFITS AS OUTLINED BELOW

As to right shoulder, based on the legal analysis contained under Issue F above, the Arbitrator awards petitioner TTD benefits from April 25, 2015, through May 6, 2016, minus TTD benefits previously paid by respondent.

As to the lumbar spine, based on the legal analysis contained under Issue F above, the Arbitrator awards Petitioner TTD benefits from April 25, 2015, through September 21, 2016 when he was released to work by Dr. Jimenez.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007665
Case Name	Vincent Secor v. Concrete Structures of the Midwest
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0190
Number of Pages of Decision	7
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Lindsay Vanderford

DATE FILED: 6/24/2026

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	)SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
	)	☐ Modify	☐ PTD/Fatal denied
		☒ ON REMAND FROM APPELLATE COURT	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VINCENT SECOR,

Petitioner,

vs.

NO: 17 WC 7665
24 IWCC 0043

CONCRETE STRUCTURES OF THE MIDWEST,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Illinois Appellate Court. In accordance with the opinion of the Illinois Appellate Circuit Court order filed on March 6, 2026, the Commission, as instructed, re-considers the issues of penalties under section 19(k) of the Act and attorney fees under section 16 of the Act, and being advised of the facts and law, affirms the Decision of the Arbitrator as stated below and otherwise reaffirms and adopts the Commission's January 24, 2024, Decision and Opinion on Review, which is attached hereto and made a part hereof.

I. PROCEDURAL BACKGROUND

Petitioner initially filed a claim for benefits under the Act against the Respondent for a back injury he sustained on January 12, 2017, while sliding a heavy manhole cover with a co-worker. Following a hearing, the Arbitrator issued a decision on August 16, 2023, finding that Petitioner's current condition of ill-being was causally connected to the accident, awarding medical expenses, temporary total disability benefits, maintenance benefits, permanent total disability benefits, penalties under sections 19(k) and 19(l) of the Act, and attorney fees under section 16 of the Act.

Respondent sought review. On January 24, 2024, the Commission affirmed and modified the Decision of the Arbitrator. The Commission wrote additionally to clarify that certain expenses

for medical marijuana were not included in the award of medical expenses. The Commission also modified the awards of temporary total disability and maintenance benefits. The Commission otherwise affirmed and adopted the Decision of the Arbitrator, including the awards of penalties and attorney fees under Sections 19(k), 16 and 19(l) of the Act.

Respondent sought administrative review in the Circuit Court of Cook County. On November 18, 2024, the Circuit Court entered an order confirming the Commission decision in all respects except for the award of penalties under section 19(k) of the Act and attorney fees under section 16 of the Act.¹ The Circuit Court concluded that “the Commission, in adopting the Arbitrator’s decision, did not distinguish between the standards applicable to penalties under Section 19(l) and those pursuant to section 19(k), conflating the two and holding that the ‘burden of proof of the reasonableness of its conduct is upon the employer’ for an assessment of ‘penalties,’ generally.” Cir. Ct. Order at 2. The Circuit Court added that “[c]ontrary to the Commission’s determination, Section 19(k) does not impose any burden of proof on the Respondent-Employer and requires application of a standard differing from that applicable to an award pursuant to Section 19(l).” Cir. Ct. Order at 2-3 (citing *McMahan v. Industrial Comm’n*, 183 Ill. 2d 499, 515 (1998); and *Jacobo v. Industrial Comm’n*, 2011 IL App (3d) 100807WC, ¶ 24).

Petitioner and Respondent cross-appealed the matter to the Illinois Appellate Court. On March 6, 2026, the Illinois Appellate Court issued an opinion affirming the Commission’s decision in all respects except for the award of penalties under section 19(k) of the Act and attorney fees under Section 16 of the Act. *Concrete Structures of the Midwest v. Illinois Workers’ Compensation Comm’n*, 2026 IL App (1st) 242493WC. The Appellate Court agreed with the Circuit Court that the Commission applied the improper legal standard:

“The Commission, in affirming and adopting the arbitrator’s decision, conflated section 19(l)—which shifts the burden to the employer to demonstrate its actions were reasonable—with sections 19(k) and 16 of the Act, where the burden remains on claimant to establish entitlement to the penalties and fees. The Commission reasoned that ‘the burden of proof of the reasonableness of its conduct is upon the employer’ but did not distinguish that this burden is only applicable under section 19(l) and instead applied this standard to all three assessments of penalties and fees. This conflation of legal standards is an error of law and an abuse of discretion. Therefore, we affirm the circuit court’s decision to set aside the Commission’s award of section 19(k) penalties and section 16 attorney fees and remand these issues back to the Commission to apply the correct standard to these statutory penalties and fees.” *Id.* ¶ 31.²

¹ The Circuit Court order confirmed the penalties awarded pursuant to Section 19(l) of the Act.

² The Decision of the Arbitrator, as affirmed by the Commission, stated: “Moreover, the Appellate Court has noted on multiple occasions that the burden of proof of the reasonableness of its conduct is upon the employer. *Consolidated Freightways, Inc. v. Industrial Commission*, 136 Ill.App.3d 630, 483 N.E.2d 652, 654 (3rd Dist. 1985); accord, *Ford Motor Company v. Industrial Commission*, 140 Ill.App.3d, [sic] 488 N.E.2d 1296 (1st Dist. 1986).” In *Consolidated Freightways*, a case involving Section 19(l) penalties, the Appellate Court relied on Illinois Supreme Court precedent involving both Section 19(l) and 19(k). *Consolidated Freightways*, 136 Ill. App. 3d 630, 633 (citing *Board of Education v. Industrial Comm’n*, 93 Ill. 2d 1, 9 (1982)).

Having received the mandate of the Illinois Appellate Court, the Commission reconsiders the award of section 19(k) penalties and section 16 attorney fees in this case, in conformity to the appellate opinion.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the “Findings of Facts” and findings included in the “Conclusions of Law” contained in the Arbitrator’s Decision filed on August 16, 2023, as incorporated by reference, to the extent it does not conflict with the Commission’s Decision and Opinion filed on January 24, 2024, as incorporated by reference, to the extent these decisions do not conflict with the Circuit Court of Cook County’s order filed on November 18, 2024, as incorporated by reference. The Commission also incorporates by reference the March 6, 2026, opinion of the Illinois Appellate Court.

III. CONCLUSIONS OF LAW

On remand, the Commission is ordered to reconsider the award of penalties under Section 19(k) of the Act and attorney fees under Section 16 of the Act, in conformity with the opinion of the Illinois Appellate Court and specifically “to apply the correct standard to these statutory penalties and fees.” On remand, the Commission is charged with following the court’s order. *Noonan v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 152300WC, ¶ 11.

As noted by the reviewing courts in this matter, the standard of proof for granting penalties pursuant to section 19(l) of the Act differs from the standard for granting penalties and attorney fees under sections 19(k) and 16. Section 19(l) provides in pertinent part that where an employee has made a written demand for payment, the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay in payment. See 820 ILCS 305/19(l) (West 2024). A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. *Id.* Penalties under section 19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm’n*, 344 Ill. App. 3d 752, 763 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory “[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.” *McMahan v. Industrial Comm’n*, 183 Ill. 2d 499, 515 (1998).

In contrast, the standard of proof for awarding penalties under section 19(k) (820 ILCS 305/19(k) (West 2024)) is higher than the standard under section 19(l). The standard for awarding attorney fees under section 16 of the Act is similarly higher, as section 16 provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 2020). Sections 19(k) and 16 require more than an unreasonable delay in payment of an award. *McMahan v. Industrial Comm’n*, 183 Ill. 2d 499, 514-15 (1998). Although all three provisions refer to unreasonable delay, the standard under section 19(l) must differ from that set forth in section 19(k) and repeated in section 16, as there would be a redundancy otherwise. *Id.* at 514. Accordingly, it is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *Id.* at 515. Instead, section 19(k) penalties and section 16 fees 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.” *Id.* In addition, while section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under sections 19(k) and section 16 is discretionary. *Id.*

To address any conflation of standards posed by the Commission’s adoption of the arbitrator’s factual and legal analysis in the award of 19(k) penalties in this matter, the Commission begins by reiterating the Arbitrator’s findings on the issue which formed the basis of the award of penalties under 19(k):

“In light of the multiple opinions provided by Petitioner’s treating doctors and some of the Section 12 examiners, as well as the vast medical evidence showing Petitioner’s ongoing and worsening conditions, the Arbitrator finds Respondent’s reliance on the opinions of Dr. Zelby and Dr. Noren unreasonable in this case. Further, the Arbitrator also finds Respondent’s reliance on the updated vocational opinions from Vocamotive to pay Petitioner wage loss benefits rather than temporary total disability benefits or permanent total disability benefits was not reasonable. Again, Vocamotive issued a report which simply listed jobs without considering the fact that subsequent to the FCE, Petitioner had been forced to use a wheelchair, been catheterized, had increased pain in his lower body with even short periods of standing or walking, and had been declared permanently disabled by his treating neurologist. Respondent’s reliance on such a report to determine that a stable labor market exists for Petitioner and how much Petitioner would be able to earn was unreasonable and the delay in payment of proper benefits has been vexatious.” Arb. Dec. at 13.

In addition to these facts cited and relied on by the Arbitrator, the Commission also points to additional facts in the record to find that Petitioner successfully met his burden to prove entitlement to penalties and fees under sections 19(k) and 16 of the Act, acknowledging that the burden remains on claimant to establish entitlement to the penalties and fees. Specifically, the record supports a finding that Respondent’s reliance on the opinions of Dr. Zelby and Dr. Noren rose to the level of “unreasonable and vexatious”, the correct standard under sections 19(k) and 16 of the Act.

The Commission finds that under this applicable standard and the factual record in this matter applied thereto, Petitioner has met his burden to prove that Respondent’s conduct in relying on the opinions of Drs. Zelby and Noren to deny payment of benefits was unreasonable and vexatious. Our supreme court has ruled that “[w]hen the employer acts in reliance upon responsible medical opinion or when there are conflicting medical opinions, penalties are not ordinarily imposed.” *Avon Products, Inc. v. Industrial Comm’n*, 82 Ill. 2d 297, 302 (1980). However, our supreme court has made clear that “the test is not whether there is some conflict in medical opinion.” *Continental Distributing Co. v. Industrial Comm’n*, 98 Ill. 2d 407, 415 (1983). Rather, the dispositive question is “whether the employer’s conduct in relying on the medical opinion to contest liability is reasonable under all the circumstances presented.” *Id.* at 416.

In looking at all of the circumstances presented, here, Dr. Zelby’s opinion that Petitioner did not have cauda equina syndrome and had a satisfactory postoperative condition was contradicted not only by Petitioner’s treating doctors, Dr. Goldberg and Dr. Bijari (as supported

by the vast treatment records cited by the Arbitrator), but also by two of Respondent's other section 12 examiners, Dr. Butler, and Dr. Elterman. Similarly, Dr. Noren believed that Petitioner was not being honest about his symptoms and diagnosed him with subjective residual pain complained exacerbated by symptom magnification but (as the Arbitrator observed), Dr. Noren is the only physician in this case who has accused Petitioner of exaggeration. Based on the entire record in this case, the Commission concludes that Respondent's reliance on Drs. Zelby and Noren was unreasonable, vexatious, and undertaken in bad faith as those terms are comprehended by sections 19(k) and 16 of the Act. The Commission further reaffirms that Respondent's reliance on the Vocamotive report was similarly vexatious for the reasons stated in the Decision of the Arbitrator, additionally warranting penalties pursuant to section 19(k) and attorney fees pursuant to section 16 of the Act. Accordingly, the Commission concludes that Petitioner has satisfied the burden of proving that he is entitled to the section 19(k) penalties and section 16 attorney fees previously awarded by the Commission in this case.

In all other respects, the Commission reaffirms and adopts the Commission's Decision and Opinion filed on January 24, 2024.

IT IS THEREFORE FOUND BY THE COMMISSION that Respondents' non-payment of compensation in this case was unreasonable, vexatious, and undertaken in bad faith as those terms are comprehended by sections 19(k) and 16 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion of the Commission filed on January 24, 2024, is hereby reaffirmed and adopted as modified herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner penalties of \$97,225.60, as provided in section 19(k) of the Act; and \$10,000.00, as provided in section 19(l) of the Act. Respondent also shall pay \$38,890.24 in attorney fees, as provided in section 16 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court 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.

June 24, 2026

r: 06/17/26

CMD/kcb

045

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

/s/ Frank J. Soto
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC025046
Case Name	Guillermo Arrieta v. ABM
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0191
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Froylan
Respondent Attorney	Christopher Jarchow

DATE FILED: 6/24/2026

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

☐ Affirm and adopt	☐ 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

GUILLERMO ARRIETA,

Petitioner,

vs.

NO: 22 WC 25046

ABM,

Respondent.

DECISION AND OPINION ON REVIEW

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

Regarding permanent total disability benefits, the Commission agrees with the Arbitrator's findings but modifies the start date from May 20, 2025, to May 21, 2025, as provided in Section 8(a) and 8(f) of the Act. On May 20, 2025, Edward Steffan with EPS Rehabilitation Inc. opined Petitioner was not a candidate for vocational rehabilitation or job placement. Based on Mr. Steffan's opinions, the Arbitrator correctly awarded maintenance benefits through May 20, 2025, therefore, PTD benefits should not have begun until May 21, 2025.

Regarding vocational rehabilitation expenses, the Commission vacates the Arbitrator's denial for reimbursement of vocational services, and partially awards payment of vocational services to EPS Rehabilitation Inc. An injured employee is entitled to vocational rehabilitation if he or she is unable to return to his or her prior job as a result of the injury. 820 ILCS 350/8(a); 50 Ill. Admin. Code § 9110.10. Section 8(a) states, in part, "the employer shall also pay for treatment, instruction and training necessary for the physical, mental, and vocational rehabilitation of the employee, including all maintenance costs, and expenses incidental thereto." 820 ILCS 350/8(a).

22 WC 25046

Page 2

Petitioner underwent a functional capacity evaluation on February 7, 2025, placing him in the light physical demand range. On March 3, 2025, Petitioner's counsel requested vocational rehabilitation, which Respondent denied based on the full duty release by Section 12 examiner, Dr. Kern Singh. On April 21, 2025, Petitioner's pain management provider adopted the restrictions outlined in the FCE and released Petitioner from care. Subsequently, Petitioner underwent a vocational assessment with EPS Rehabilitation Inc. In addition to the assessment, EPS also conducted a short labor market survey, ultimately concluding Petitioner was not a candidate for job placement or vocational rehabilitation. Following this opinion, Respondent hired vocational counselor, Jacqueline Bethell, to conduct a labor market survey dated June 25, 2025. In response, EPS Rehabilitation Inc. issued a rebuttal report on July 25, 2025.

The Commission agrees with Petitioner's permanent light duty restrictions and the need for a vocational assessment based on those restrictions. Since Respondent denied a vocational assessment, Petitioner sought his own with EPS. We find these vocational expenses reasonable and necessary under Section 8(a) and award same. However, we find Rehabilitation Report (2), prepared by EPS Rehabilitation Inc., to be in direct response to Respondent's labor market survey and solely for purposes of litigation, as EPS had previously opined Petitioner was not a candidate for gainful employment or vocational rehabilitation. Therefore, we deny all vocational expenses related to Rehabilitation Report (2).

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 1, 2025, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of \$466.66 per week for 72 6/7 weeks, commencing November 29, 2023, through April 21, 2025, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner maintenance benefits of \$466.66 per week for 4 1/7 weeks, commencing April 22, 2025, through May 20, 2025, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses incurred in the treatment of Petitioner's injuries sustained on August 3, 2022, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent and total disability benefits of \$466.66/week for life, commencing May 21, 2025, 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.

22 WC 25046

Page 3

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner penalties of \$1,230.00, as provided in Section 19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to EPS Rehabilitation Inc. all reasonable and necessary vocational expenses related to the vocational evaluation and rehabilitation plan dated May 20, 2025, and the labor market sampling dated May 13, 2025, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner interest under Section 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.

June 24, 2026

o: 5/21/26

MP/ns

068

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC025046
Case Name	Guillermo Arrieta v. ABM
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	David Froylan
Respondent Attorney	Christopher Jarchow

DATE FILED: 10/1/2025

/s/Elaine Llerena, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 30 2025 3.72%

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**

Guillermo Arrieta

Employee/Petitioner

v.

ABM

Employer/Respondent

Case # **22 WC 025046**

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 **July 28, 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 **Reimbursement for reports from EPS Rehabilitation Inc**

FINDINGS

On **August 3, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$36,400.00**; the average weekly wage was **\$700.00**.

On the date of accident, Petitioner was **60** years of age, *single* with **0** dependent children.

Respondent shall be given a credit of **\$33,327.22** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$33,327.22**.

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 \$466.66 per week for 72 & 6/7 weeks, commencing November 29, 2023, through April 21, 2025, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner maintenance benefits of \$466.66 per week for 4 & 1/7 weeks, commencing April 22, 2025, through May 20, 2025, as provided in Section 8(a) of the Act.

Respondent shall pay unpaid reasonable and necessary medical services incurred in the treatment of Petitioner's injuries sustained on August 3, 2022, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of \$466.66/week for life, commencing May 20, 2025, 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.

Respondent shall pay to Petitioner penalties of \$1,230.00, as provided in Section 19(l) of the Act.

Petitioner's claim for reimbursement of vocational rehabilitation services provided by EPS Rehabilitation Inc is denied.

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

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



Signature of Arbitrator

OCTOBER 1 2025

FINDINGS OF FACT

This matter proceeded to hearing on July 28, 2025, in Chicago, Illinois before Arbitrator Elaine Llerena. The issues in dispute are causal connection, medical expenses, 8(j) credit, temporary total disability benefits, maintenance benefits, reimbursement for vocational rehabilitation, penalties and attorney's fees, and permanent disability. Arbitrator's Exhibit 1 (AX1). Petitioner testified through the use of an interpreter.

This matter was first heard on Petitioner's 19(b) motion on November 28, 2023. The Arbitrator issued a decision on March 28, 2024, finding that Petitioner's accident did arise out of and in the course of Petitioner's employment with Respondent on August 3, 2022, that Petitioner provided Respondent timely notice of the accident, and that Petitioner's condition of ill-being is causally related to the August 3, 2022, work accident. The Arbitrator awarded Petitioner payment of outstanding medical expenses, temporary total disability benefits, and prospective medical care in the form a left transforaminal epidural steroid injection at the left L4-S1 as recommended by Petitioner's medical treaters. The Arbitrator's decision was not reviewed and is now final.

Summary of Medical Records

Petitioner returned to Dr. Mark Farag on June 14, 2024, who on that date administered a left L3-4, L5-S1 transforaminal epidural steroid injection. (PX4) Petitioner followed up with Daniel Juarez, PA-C on June 28, 2024, complaining of continued low back pain that was constant. Petitioner described the pain as achy and dull and indicated that it radiated down his left lower extremity, but that the radiculopathy had improved after the injection. Petitioner reported that his pain was worse with ambulation. Juarez recommended a bilateral L4-S1 lumbar medial branch block to be followed by a radiofrequency ablation if successful. Petitioner said he would think about. Juarez kept Petitioner off work. Following the return of his radiculopathy symptoms, Petitioner underwent a second transforaminal epidural steroid injection at L3-4 and L5-S1 on November 15, 2024. Petitioner followed up with Dr. Daniel Drag on January 29, 2025, and reported that the second injection failed to provide any relief and instead caused him to suffer elevated blood pressure for a few days after the injection. Petitioner also reported having increased anxiety due to his pain and frustration with his inability to do activities such as ride a bicycle or play soccer anymore due to the pain. Dr. Drag discussed consulting with a spinal surgeon with Petitioner, but Petitioner indicated he was not interested in surgery at that time. Dr. Drag noted that Petitioner may benefit from additional injections in the future, referred Petitioner for a functional capacity examination (FCE), and kept Petitioner off work.

Petitioner underwent the FCE on February 7, 2025, at Independent WorkSite Solutions. (PX5) The FCE exam was deemed to be consistent and valid. The FCE determined that Petitioner was able to meet the light duty physical demand level with abilities of lifting 15 pounds from the floor, 15 pounds from waist to shoulder height, 10 pounds above his head, carrying 20 pounds and pushing/pulling 50 pounds. He was also found to be able to do occasional crouching, stooping, trunk rotation, walking, standing, forward and overhead reaching. The FCE found that Petitioner was not able to meet the medium physical demands of his previous position as a floor grinder while working for Respondent.

On February 10, 2025, Petitioner was sent for a second Section 12 examination (IME) with Dr. Kern Singh at Respondent's request. (RX3) Dr. Singh recorded a history of an injury at work resulting in low back pain after operating a buffing machine at work. Dr. Singh opined that Petitioner sustained a soft tissue muscular strain of the lumbar spine, which has resolved. He noted that Petitioner had subjective pain complaints in the low back pain and entire left leg that was nonanatomic and nonobjectifiable. He further noted that Petitioner had preexisting L5-S1 isthmic spondylolisthesis without significant stenosis on radiographic imaging that was not causally related to August 3, 2022, work accident. Dr. Singh opined that Petitioner was capable of working full

duty without restrictions and that Petitioner had reached maximum medical improvement (MMI) approximately 4 weeks after the August 3, 2022, work accident.

Petitioner's final visit at Midwest Anesthesia and Pain Specialists occurred on April 21, 2025. (PX4) Petitioner saw nurse practitioner Mary-Cate Devitt and complained of continued low back pain that was intermittent, burning and achy in nature that radiated into his left leg, along with radiation of numbness and tingling in his left leg. He also reported cramping in the left leg when laying down and worse pain when using the stairs. Devitt discharged Petitioner from care with permanent light duty restrictions based on the FCE.

Vocational Assessment and Labor Market Survey

On May 13, 2025, Edward Steffan from EPS Rehabilitation Inc prepared a limited telephonic labor market sampling report. (PX16) Mr. Steffan researched and contacted 20 potential employers, of which he identified one position as a door greeter at Forman Mills, in which Petitioner could be employable at an entry level wage of \$15.00 – \$17.86 per hour. For the one potential employer that was listed, there was no description of the physical requirements, but the description under reasonable accommodations states the employer may be willing to allow an employee to use a stool at the door.

Petitioner met with Mr. Steffan on May 14, 2025. (PX11) Mr. Steffan issued his vocational assessment report on May 20, 2025, finding that Petitioner's limited education, lack of transferrable skills and diminished physical capacities preclude him from being a viable employment candidate. Mr. Steffan further found that even with the assistance of a certified rehabilitation counselor it was not probable that Petitioner could induce a potential employer to hire him over other employment candidates.

On June 25, 2025, Jacqueline Bethell and Michael Wyness of MedVoc Rehabilitation Ltd. completed a labor market survey report. (RX4) Ms. Bethell concluded Petitioner would be capable of bench work to include assembler, sorter, and packer. Ms. Bethell conducted a telephonic labor market survey, contacting 38 prospective employers and identified 15 employers who indicated that an applicant with Petitioner's language skills, job history, and physical limitations qualified for their positions. Ms. Bethell concluded the mean entry-level wage for these positions was \$17.13 per hour.

On July 25, 2025, Mr. Steffan wrote a supplemental report after reviewing Ms. Bethell's labor market survey report. (PX17) Mr. Steffan found the June 25, 2025, report findings to be contradictory and improbable based on the current labor market. Mr. Steffan reiterated his prior opinion that Petitioner was not a viable employment candidate and that assistance from a certified rehabilitation counselor would not make Petitioner any more viable as an employment candidate. Mr. Steffan also noted that the labor market survey report was done in June 2025 and listed eight Chicago based employers who apparently all relayed that the wage range started at \$15.20 per hour; even though the minimum wage in the City of Chicago was \$16.20 per hour on June 25, 2025, and then increased to \$16.60 per hour starting July 1, 2025.

Petitioner's Current Condition

Petitioner has not seen any physician for his low back complaints, nor has he sought any medical treatment since April 2025. (T. 47-48) Petitioner testified that Mr. Steffan gave him some jobs to apply to but could not remember with whom. (T. 38-39) He reached out to 8 potential employers but was either told that he was not qualified due to his restrictions, or did not receive a response. (T. 40 & 57) Petitioner explained that it is not easy for him to contact potential employers due to language barriers and lack of access to potential employers who are hiring. (T. 62-63) Petitioner testified that he had filled out employment applications. (T. 40-41)

Petitioner testified that he has not returned to work for Respondent since the work accident and that his employment with Respondent was terminated. (T. 18) Petitioner has not returned to any type of work since the work accident. (T. 36) Petitioner complained of ongoing pain in his back, which radiates down to his leg. (T. 26-27) Petitioner had never injured his back prior to August 3, 2022, and has not had any new injuries to his back since the work accident. (T. 27)

At some point during the hearing, Petitioner testified while standing due to pain in his back. (T. 46) Petitioner testified that he cannot be in one particular position for long and has to keep moving. (T. 49) Petitioner occasionally takes medication when his back hurts badly and continues to do home exercises and use an H-Wave machine to help with the pain. (T. 47, 49-50).

CONCLUSIONS OF LAW

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

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

The Arbitrator notes her prior decision, dated March 28, 2024, finding Petitioner sustained a compensable work accident. The Arbitrator further notes that prior to the August 3, 2022, work accident, Petitioner was working without any back or left leg issues and without restrictions. Following the August 3, 2022, work accident, Petitioner has continued to have lower back and left leg issues that required further treatment following the November 2023 hearing. Following that hearing, the Arbitrator notes that Petitioner underwent two transforaminal epidural steroid injections to his L3-4 and L5-S1, which resulted in minimal to no improvement of his symptoms. The Arbitrator further notes that Petitioner was diagnosed by his treating physicians, as well as Dr. Graf (see PX1), with low back pain and radiculopathy following the August 3, 2022, work accident and now has permanent restrictions per the February 7, 2025, FCE.

The Arbitrator notes that Petitioner underwent another IME following the November 2023 hearing with Dr. Singh who opined that Petitioner sustained a soft tissue muscular strain of the lumbar spine, which has resolved. He further noted that Petitioner had preexisting L5-S1 isthmic spondylolisthesis without significant stenosis on radiographic imaging that was not causally related to August 3, 2022, work accident and determined that Petitioner could return to work without restrictions. The Arbitrator finds Dr. Singh's findings and opinions unpersuasive and contradictory to the medical records, Petitioner's consistent and ongoing complaints and the findings of the FCE.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the August 3, 2022, work accident.

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

The Arbitrator notes her prior decision, dated March 28, 2024, finding Petitioner sustained a compensable work accident and the finding above that Petitioner's current condition of ill-being is causally related to the August 3, 2022, work accident. The Arbitrator finds that all medical care rendered to Petitioner was either emergency treatment or within the chain of referrals from Petitioner's physician. Further, the Arbitrator notes that while Dr. Singh found that Petitioner had reached MMI and his condition had likely

resolved 4 weeks after the work accident, the Arbitrator finds Dr. Singh's conclusions to be unpersuasive and contradictory to the medical evidence.

Based on the above, the Arbitrator finds that Respondent shall pay all outstanding medical expenses incurred in the treatment of Petitioner's injuries sustained on August 3, 2022, as provided in Sections 8(a) and 8.2 of the Act.

The Arbitrator notes that Respondent requests 8(j) credit of \$945.00 for medical expense paid to ATI Physical Therapy. Petitioner claims that this cost was covered by health insurance provided by Petitioner's union and, as such, Respondent is not entitled to a credit. The Arbitrator notes that this expense was addressed in the March 28, 2024, decision and that the decision indicates that "[t]he parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act of \$945.00." As the March 28, 2024, decision has become final, that credit is now the law of the case.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her prior decision, dated March 28, 2024, finding Petitioner sustained a compensable work accident and the finding above that Petitioner's current condition of ill-being is causally related to the August 3, 2022, work accident. The Arbitrator notes that the medical records show that Petitioner was kept off work by his treaters until April 21, 2025, when he was found to be at MMI and discharged from care with permanent restrictions. Respondent provided a payment ledger (RX5) showing that it has paid Petitioner \$65,460.04 in temporary total disability benefits thus far. However, the only time period at issue in this hearing is from the day after the last hearing, November 29, 2023, through the date of the current hearing, July 28, 2025. Per the ledger provided by Respondent, it has paid \$33,327.22 in temporary total disability benefits from November 29, 2023, through July 22, 2025. Therefore, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from November 29, 2023, (the day after the first hearing) through April 21, 2025 (MMI date). Respondent is entitled to a credit for temporary total disability benefits paid in the amount of \$33,327.22 for the period between November 29, 2023, through July 28, 2025.

Regarding Petitioner's claim for maintenance benefits, the Arbitrator notes that Petitioner made a request for vocational rehabilitation from Respondent on March 3, 2025, noting that Petitioner's employment had been terminated by Respondent. (PX15) Respondent denied Petitioner's request, relying on Dr. Singh's IME. *Id.* On May 20, 2025, Mr. Steffan, who Petitioner's counsel sent Petitioner to see for a vocational assessment, determined that Petitioner is not a candidate for vocational rehabilitation and that Petitioner was not a viable candidate for employment. The Arbitrator also notes that Petitioner had not been released to return to work or found to be at MMI by his treaters until April 21, 2025. Therefore, based on the MMI finding on April 21, 2025, and Mr. Steffan's finding on May 20, 2025, that Petitioner is not a candidate for vocational rehabilitation, the Arbitrator finds that Petitioner is entitled to maintenance benefits from April 22, 2025, through May 20, 2025.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Illinois courts have routinely held that a claimant does not need to be reduced to total physical incapacity before a permanent total disability award may be granted. *See Interlake, Inc. v. Indus. Comm.*, 86 Ill. 2d 168, 176-77 (1981). The Illinois Supreme Court has frequently held that an employee is totally and permanently disabled when the employee "is unable to make some contribution to the work force sufficient to

justify the payment of wages.” *Ceco Corp. v. Industrial Comm’n*, 447 N.E.2d 842, 845 (Ill.1985) (citing e.g., *Gates Division, Harris-Intertype Corp. v. Industrial Comm’n*, 399 N.E.2d 1308 (Ill. 1980)). An employee is permanently and totally disabled when the employee is incapable of performing services except those for which there is no reasonably stable market. *Id.* If the employee’s disability is limited and it is not obvious that the employee is not employable, the employee may demonstrate entitlement to permanent total disability benefits by proving that the employee falls within the “odd lot” category. *Id.* The odd lot category consists of employees who are not altogether incapacitated for work, but are so handicapped that they will not be employed regularly in any well-known branch of the labor market. *Valley Mould & Iron Co. v. Industrial Comm’n*, 419 N.E.2d 1159 (Ill. 1981 (citing A. Larson, Workmen’s Compensation sec. 57.51, at 10-164.24 (1980))). In arriving at a determination of an award for permanent and total disability, the Commission should consider the extent of the claimant’s injury, the nature of his employment, his age, experience, training and capabilities. *A.M.T.C. of Illinois, Inc., v. Indus. Comm’n*, 77 Ill. 2d 482, 489, 397 N.E.2d 804, 807 (1979).

An employee meets the burden of proving that he or she falls into the odd-lot category in one of two ways: (1) by showing a diligent but unsuccessful job search; or (2) by demonstrating that the disability together with the employee’s age, training, education, and experience does not permit the employee to find gainful employment. *ABB C-E Servs. v. Industrial Comm’n*, 737 N.E.2d 682 (5th Dist. 2000). Once the employee makes this showing, the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to the claimant. *Ceco Corp.*, 447 N.E.2d at 845-846. See also *Westin Hotel v. Industrial Comm’n*, 865 N.E.2d 342, (2007). Absent evidence of available employment, the Commission can award permanent total disability benefits to the employee. *Waldorf Corp. v. Industrial Comm’n*, 708 N.E.2d 476 (3d Dist. 1994). See also *ARA Servs. v. Indus. Comm’n*, 226 Ill. App. 3d 225, 233-34, 168 Ill. Dec. 756, 761, 590 N.E.2d 78, 83 (1992).

In the case at bar, the Arbitrator notes that the work accident caused injury to Petitioner’s lumbar spine, which has resulted in permanent restrictions of no lifting over 15 pounds from the floor, 15 pounds from waist to shoulder height, 10 pounds above his head, carrying 20 pounds, pushing/pulling 50 pounds, and occasional crouching, stooping, trunk rotation, walking, standing, forward and overhead reaching per the FCE. The FCE further determined that Petitioner could perform in the light physical demand level and not at the medium physical demand level, which his job with Respondent was. Respondent did not accommodate Petitioner’s permanent restrictions and terminated his employment. Following the FCE and job termination, Petitioner sought out vocational rehabilitation assistance, which Respondent declined to provide. According to the vocational assessment of Petitioner by Mr. Steffan, Petitioner is not a candidate for vocational rehabilitation, does not have access to a readily available and stable labor market, and it is not probable that Petitioner can induce an employer to hire him over another candidate. Respondent did not provide a vocational assessment of Petitioner, instead providing a labor marker survey report which, as noted by Mr. Steffan, is contradictory and improbable based on the current labor market and contains inaccuracies regarding current wages available. As such, the Arbitrator finds the labor market survey report unpersuasive and that Respondent failed show that a reasonably stable labor market exists for Petitioner.

The Arbitrator also notes that Mr. Steffan met with Petitioner, got a job history from Petitioner, and reviewed Petitioner’s medical information. After gathering all that information, Mr. Steffan determined that Petitioner’s limited education, lack of transferrable skills and diminished physical capacities preclude him from being a viable employment candidate and that even with the assistance of a certified rehabilitation counselor, it was not probable that Petitioner could induce a potential employer to hire him over other employment candidates. The Arbitrator notes that Petitioner testified that he attempted to secure employment with other employers but was not hired by any of the employers he contacted. As such, the Arbitrator finds that Petitioner is unable to return to his previous line of work or any other work. The Arbitrator notes that Petitioner has worked for 44 years in the United States doing only physically demanding, manual labor jobs, which fall into

the medium to heavy physical demand categories. (T. 15; PX1 & PX5) His highest level of education is a high-school equivalent from Mexico. (T. 12) Given his age (62), and lack of education and transferrable skills, Petitioner is unlikely to be able to obtain any gainful employment. As such, the Arbitrator finds that Petitioner falls under the second prong for “odd lot” category of permanent total disability and is permanently and totally disabled as a result of his work injury.

Based on the above, the Arbitrator finds that Petitioner falls into the “odd lot” category of permanent total disability and is entitled to permanent totally disability benefits. Respondent shall pay Petitioner permanent and total disability benefits of \$466.66 per week for life, commencing May 20, 2025, pursuant to Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award and for every subsequent July 15th, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner’s claim for penalties and attorney’s fees are for late payments and nonpayment of temporary total disability and medical benefits awarded in the Arbitrator’s March 28, 2024, decision. Under the Illinois Workers’ Compensation Act (Act), the Commission has no power to enforce payment of its own award and the only method to enforce a final award of the Commission is in the circuit court pursuant to Section 19(g) of the Act. *Preston v. Indus. Comm’n of Ill.*, 332 Ill. App. 3d 708 (2002), *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC. The March 28, 2024, decision was not reviewed and, as such, is a final award. As the Arbitrator lacks jurisdiction to enforce payment of her own prior final award, the Arbitrator equally lacks jurisdiction to award penalties and fees regarding the prior final award.

The only late payments of temporary total disability benefits that apply to the current hearing, per Respondent’s payment ledger, are from December 5, 2024, through January 14, 2025, which represents a 6-week gap (41 days) in temporary total disability payments. Checks began to be issued again from January 15, 2025, until February 18, 2025, when Respondent terminated temporary total disability benefits based on Dr. Singh’s IME report. While the Arbitrator did not find Dr. Singh’s findings and opinions persuasive, it does not find Respondent’s reliance on his report unreasonable or vexatious.

Based on the above, the Arbitrator finds that Respondent shall pay to Petitioner \$1,230.00 (41 days x \$30.00 per day), as provided in Section 19(l) of the Act.

WITH RESPECT TO ISSUE (O), REIMBURSEMENT OF REPORTS BY EPS REHABILITATION INC, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Section 9110.10 of the Rules Governing Practice Before the Illinois Workers’ Compensation Commission (Rules) sets forth that “[a]n employer’s vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment. The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged at the time of injury. When the period of total incapacity for work exceeds 365 days, the written assessment required by this subsection shall likewise be prepared.” *Ill. Admin. Code tit. 50 § 9110.10*. Section 8(a) of the Act states, in part, “[t]he employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self-sufficient the

employer shall further pay for such maintenance or institutional care as shall be required.” 820 ILCS 305/8(a) (2013).

The Arbitrator notes that while a vocational assessment is required to determine if a claimant is unable to resume working as a result of the work accident, neither the Rules nor the Act require Respondent to pay for that vocational assessment. The vocational assessment report, limited telephonic labor market survey report, and supplemental report from Mr. Steffan were reports prepared for the purposes of litigation that Petitioner requested in order to prove his case. It is not Respondent’s responsibility to pay for those reports. Therefore, Petitioner’s claim for reimbursement for the reports provided by EPS Rehabilitation Inc is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC003865
Case Name	Alexia Kern (Widow of James Kern) v. United Airlines, Inc
Consolidated Cases	
Proceeding Type	Remand from the Appellate Court
Decision Type	Commission Decision
Commission Decision Number	26IWCC0192
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Karen Coon

DATE FILED: 6/24/2026

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ Modify	☐ PTD/Fatal denied
	☒ ON REMAND FROM APPELLATE COURT	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALEXIA KERN, WIDOW OF
JAMES KERN,

Petitioner,

vs.

NO: 14 WC 003865
23 IWCC 0394
24 IWCC 0273

UNITED AIR LINES, INC.,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Illinois Appellate Court. In accordance with the opinion of the appellate court filed on February 13, 2026, the Commission considers the issues of accident, notice, causal connection, medical expenses, prospective medical care, temporary total disability, permanent disability, and penalties and fees, and being advised of the facts and law, awards the estate of Decedent James Kern benefits pursuant to the Illinois Workers' Compensation Act for the reasons stated below.

I. PROCEDURAL BACKGROUND

Petitioner's claim was the subject of an arbitration hearing held on December 16, 2021. In a decision filed on June 17, 2022, the Arbitrator found that Decedent James Kern, a pilot for Respondent, did not sustain an accident that arose out of and in the course of his employment while deplaning in London.

Petitioner sought a review by the Commission, which issued a Decision and Opinion on Review on August 31, 2023, reversing the Decision of the Arbitrator denying Respondent's motion to dismiss based on timeliness and statute of limitations. The Commission found that the original Application filed by Decedent in 2009 and dismissed for want of prosecution in 2012 was never properly reinstated pursuant to Commission Rule 9020.90, thus resulting in a final judgment that

was *res judicata* regarding Decedent's claim, following the Illinois Appellate Court's decision in *Farrar v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 143129WC, ¶¶ 14, 17-18. Accordingly, Decedent's February 5, 2014, refiled Application and Petitioner's August 14, 2015, amended Application were nullities. In addition, Petitioner's Application filed on February 25, 2020, first alleging a fatal matter was barred by the statute of limitations under Section 6(d) of the Act. Accordingly, the Commission dismissed Petitioner's applications as untimely and barred by the statute of limitations. *Kern (Widow of James Kern) v. United Airlines, Inc.*, Ill. Workers' Comp. Comm'n, No. 14 WC 003865, 23 IWCC 0394 (Aug. 31, 2023).

Petitioner sought judicial review of the Commission's decision in the Circuit Court of Cook County. On February 22, 2024, the circuit court entered an order reversing the Commission's decision granting Respondent's motion to dismiss. The circuit court, while citing *Farrar*, ruled that the Commission lacked the statutory authority to dismiss Decedent's refiled 2014 Application and Petitioner's August 14, 2015 amended Application based upon Decedent's failure to timely file a petition to reinstate his original claim, because to do so would shorten the statute of limitations, and improperly give *res judicata* effect to a dismissal for want of prosecution (though *Farrar* stated that a claimant's failure to timely file a petition for reinstatement before the Commission following a dismissal for want of prosecution results in a final judgment; see *Farrar*, 2016 IL App (1st) 143129WC, ¶ 14). Accordingly, the circuit court reversed the dismissal of Decedent's refiled claim. The circuit court additionally reversed the Commission's finding that Alexia's February 25, 2020, amendment to designate the Claim as a 'fatal case' was time barred as a stand-alone claim because the Commission did not consider whether Alexia's final amendment would relate back to the original claim. The circuit court reversed and remanded with instructions to "...review the decision of the Arbitrator on the merits and to re-consider its decision dismissing Alexia's claim for death benefits as time-barred in light of this Court's decision."

In accordance with the circuit court remand order, the Commission re-considered and found that Petitioner's February 25, 2020, claim for death benefits was not time-barred because it related back to Decedent's timely refiled claim, as Respondent was aware of Decedent, Petitioner, Petitioner's actual identity and capacity, as well as the nature of the litigation. *Kern (Widow of James Kern) v. United Airlines, Inc.*, Ill. Workers' Comp. Comm'n, No. 14 WC 003865, 23 IWCC 003865 (Jun. 11, 2024).

The Commission then went on to review the decision of the Arbitrator on the merits, including a review of all of the issues and arguments raised at arbitration and on review to determine what, if any, benefits to award. After so doing, on June 11, 2024, the Commission issued a Decision and Opinion on Remand affirming, with changes, the Arbitrator's original 2022 decision that Decedent failed to prove a compensable accident in this case and affirmed the denial of benefits. On review, the Commission agreed with Petitioner's argument that Decedent was a traveling employee based on his duties as a pilot for Respondent. While accepting Decedent's status as a traveling employee, the Commission performed an analysis of whether Decedent sustained accidental injuries arising out of and in the course of his employment as a pilot with Respondent. After reviewing the evidence, the Commission agreed with the Arbitrator that, as a question of fact, Petitioner failed to prove by a preponderance of the credible evidence that Decedent struck his head in the cockpit which then led to a seizure causing Decedent to fall forward while deplaning as alleged. The Commission also concluded that additional factors identified by

Petitioner's experts in an attempt to prove a work-related accident, such as lack of sleep and burnt food leading to seizure were not persuasive. Specifically, the Commission determined that Petitioner failed to prove a work-related accident under any set of facts or evidence presented at arbitration. *Kern (Widow of James Kern) v. United Airlines, Inc.*, Ill. Workers' Comp. Comm'n, No. 14 WC 003865, 23 IWCC 003865 (Jun. 11, 2024).

Both parties sought administrative review. On December 3, 2024, the Circuit Court of Cook County affirmed the Commission's remand decision, stating that "the court cannot find that the Commission's decision, or any part of it, was against the manifest weight of the evidence." Cir. Ct. Order at 6 (Dec. 3, 2024).

Both parties appealed to the Illinois Appellate Court. On February 13, 2026, the appellate court issued an order reversing the Commission's decision in part and affirming in part. *Kern v. Illinois Workers' Compensation Comm'n*, 2026 IL App (1st) 242383WC-U. The appellate court reviewed the Commission's initial decision, unanimously ruling that "[f]oreclosing decedent's applications filed in either 2014 or 2015 per Commission Rule 9020.90(a) would clearly and erroneously abridge the statute of limitations afforded under section 6(d) of the Act. *Id.* ¶ 40. In so ruling, the appellate court declined to follow its decision in *Farrar*. *Id.* ¶ 41. Accordingly, the refiled 2014 action as amended in 2015 remains viable. However, with regard to timeliness of the claimant's 2020 fatal case application, the appellate court unanimously affirmed the Commission's initial conclusion that claimant's fatal case application was untimely. *Id.* ¶ 65.

Regarding the Commission's decision considering the merits of Petitioner's 2014 case, a three-Justice majority agreed Decedent was a traveling employee but reversed the Commission's denial of compensability based on his failure to prove that the alleged accident arose out of his employment. In so ruling, the Appellate Court ruled that the *dispositive* question was whether Decedent, as a traveling employee, engaged in conduct that was reasonable and foreseeable by the employer. *Id.* ¶ 56. The majority concluded that under the rules applicable to traveling employees, Decedent's accident arose out of his employment. *Id.* In finding accident, no further risk analysis on the issue was cited by the majority.

Justice Mullen and Presiding Justice Holdridge dissented from the reversal of the Commission's finding that the accident did not arise out of Decedent's employment, reasoning that even though the Decedent was a traveling employee, a further risk analysis was required and thus determined that Decedent's seizure was a risk personal to him and therefore not compensable. *Id.* ¶ 73 (Mullen, J., dissenting). Accordingly, the dissenting Justices concluded that the Commission's holding that the accident did not arise out of his employment is not against the manifest weight of the evidence. *Id.* (Mullen, J., dissenting).

The appellate court remanded the cause to the Commission "for further proceedings to determine what benefits claimant is entitled to, if any, and any other proceedings, if any, which may be appropriate." *Id.* ¶ 67. Thus, in accordance with the remand order, and with the fatal case excluded as untimely, the Commission now determines what benefits, if any, are to be awarded to Petitioner Alexia Kern, as widow of the decedent under the pending 2014 matter, which remains viable.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the “Findings of Facts” and factual findings included in the “Conclusions of Law” contained in the arbitration decision filed on June 17, 2022, as incorporated by reference, and the “Findings of Facts” and factual findings included in the “Conclusions of Law” contained in its August 31, 2023, Decision and Opinion on Review, as well as its June 11, 2024, Decision and Opinion on Remand, as incorporated by reference, to the extent the above do not conflict with the February 13, 2026, order of the Illinois Appellate Court. The Commission also incorporates by reference the February 13, 2026, order of the Illinois Appellate Court. Any additional findings of fact in this Decision and Order on Remand will be specifically identified in the discussion below.

CONCLUSIONS OF LAW

After finding accident, the Illinois Appellate Court has ordered the Commission to determine what benefits claimant is entitled to, if any. Based upon the trial record in its entirety, including the Request for Hearing form completed by the parties at Arbitration, the Commission finds and concludes as follows.

A. Accident

The Illinois Appellate Court has concluded that under the rules applicable to traveling employees, the undisputed facts establish that Decedent sustained a work-related accident on July 17, 2008, arising out of his employment with Respondent. *Kern*, 2026 IL App (1st) 242383WC-U, ¶ 56. On direct remand the Commission is charged with following the court’s order. See *Noonan v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 152300WC, ¶ 11. Accordingly, the Commission also finds that Decedent suffered an accident in this case as he was deemed a traveling employee.

B. Notice

Decedent raised the issue of notice on the Petition for Review. Respondent stipulated to notice on the Request for Hearing. Accordingly, the Commission finds that Respondent was given notice of the accident within the time limits stated in the Act.

C. Causal Connection

The Commission next considers whether Decedent proved that his subsequent conditions of ill-being, namely that of Decedent’s subsequent seizure activity, depression, and alcoholism, had a causal connection to the accident. The Commission finds that causal connection exists between the work accident while deplaning and Decedent’s subsequent conditions through the date of his death on May 21, 2015. “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 (1982). In this case, Petitioner did not complain of seizures prior to the accident date. Thereafter, Petitioner continued to suffer

from seizures and was diagnosed with a post-concussive syndrome and a partial seizure disorder by Dr. Jackel. In February 2010, Respondent's Acting Medical Director, Dr. Korpman, recommended that Decedent be permanently grounded, but not for reasons involving alcoholism, drug use or self-inflicted injury. Based on this chain of events, the Commission finds a causal connection between the accident and Petitioner's subsequent syndromes.

The Commission further notes that "[e]very natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Duntelman v. Illinois Workers' Compensation Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42 (quoting *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26). Both Dr. Coe and Dr. Neri, Petitioner's experts, reviewed Decedent's treatment records following his accident and opined that Decedent's subsequent seizure activity, loss of his pilot's license, depression and alcoholism were all traceable to the work accident in 2008. On the first remand, the Commission discounted these opinions because they assumed an accident. Given the appellate court order finding an accident, as well as the testimony and documentary evidence submitted in this case, the Commission accepts the opinions of Dr. Coe and Dr. Neri over the opinion of Respondent's expert, Dr. Kessler, and finds that Decedent's subsequent conditions of ill-being were causally connected to his work accident through his death in 2015. The un rebutted testimony from Decedent's family members also supports the conclusion that his condition plateaued prior to his death in 2015. Accordingly, the Commission finds that Decedent was at MMI as of May 21, 2015.

Lastly, the Commission finds that any question of a causal connection between the 2008 accident and Decedent's 2015 drowning death is mooted by the appellate court's ruling affirming the Commission's ruling that Petitioner's fatal case application was untimely.

D. Medical Expenses

Having found a causal connection, the Commission addresses the medical benefits, if any, to which Decedent may be entitled. The parties stipulated the following on their Request for Hearing: "The parties are aware of no outstanding medical bills. The bills were paid by a combination of worker's compensation and [R]espondent's group health plan, Blue Cross. Respondent agrees to resolve any claim for reimbursement from Blue Cross if accident and causation are found in [P]etitioner's favor." AX1(232-233). The parties also agreed that Respondent paid at least \$8,107.17 in medical bills through its group plan for which credit may be allowed under section 8(j) of the Act. Accordingly, the Commission awards Decedent his necessary and reasonable medical benefits pursuant to sections 8(a) and 8.2 of the Act, but awards no additional unpaid medical benefits, and orders Respondent to resolve any claim for reimbursement from its group medical plan pursuant to the stipulation of the parties. The Commission also awards Respondent a credit of \$8,107.17 pursuant to section 8(j) of the Act and the stipulation of the parties.

E. Temporary Total Disability

The Commission next addresses the temporary total disability (TTD) benefits, if any, to

which Decedent may be entitled. Decedent claimed TTD benefits for the period commencing July 18, 2008 (the day after his initial seizure) through May 21, 2015 (the date of his death), a period of 357 weeks. On their Request for Hearing, the parties stipulated that a combination of TTD and Pilot's Disability Insurance (PDI) were paid for the entire aforementioned period. Respondent claimed that it paid \$79,088.75 in TTD benefits and \$456,672.33 in PDI benefits. AX1(232-233); Tr. 6, 10-11. During the arbitration hearing, Respondent agreed that the TTD period ran from the accident date through the date of Decedent's death on May 21, 2015, should the alleged accident be found compensable. Tr. 10.

To the extent TTD benefits were claimed on the Request for Hearing and discussed at arbitration, the Commission therefore finds that Decedent was entitled to TTD benefits for the period from July 18, 2008 through May 21, 2015, a period of 357 weeks at the maximum applicable TTD rate of \$1,216.75 in effect on the accident date.¹ Tr 10. Respondent shall receive a credit for amounts paid and hold Decedent's estate harmless for same. AX1(232-233); Tr 10.

F. Permanent Partial Disability

The Commission next considers the issue of permanent partial disability (PPD) benefits. This case was brought pursuant to section 19(b) of the Act. Decedent nevertheless raised the nature and extent of his injury as an issue on the Request for Hearing and his Petition for Review. AX1(232-233). As stated above, the Commission finds Petitioner reached MMI for his causally related conditions in 2013, two years before his death in 2015.

The Commission notes here that the Appellate court has found that "...claimant's fatal case application was untimely." *Kern*, 2026 IL App (1st) 242383WC-U, ¶ 65. Accordingly, the issue of permanent disability, if any, is considered as claimed by Decedent's estate. The Commission notes that "[I]f a claimant in a workers' compensation case dies during the pendency of the claims process, the claim shall proceed as if death had not occurred. If the claim ultimately prevails, all compensation that would have been awarded to the claimant shall be paid to the dependents of the deceased claimant." *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 787 (2008). A decedent's estate may be entitled to collect permanent disability benefits that had accrued and were payable, due, and owing to an employee prior to his or her death. See *Bell v. Illinois Workers' Compensation Comm'n*, 2015 IL App (4th) 140028WC, ¶ 25.

In this case, as a result of the accident Decedent suffered serious and permanent injuries not covered by Sections 8(c) and 8(e) of the Act, and is entitled to PPD benefits pursuant to Section 8(d)(2) of the Act. See 820 ILCS 305/8(d)(2) (West 2024). However, Decedent's accident occurred prior to September 1, 2011, so the Commission's determination of PPD is not required to be based on the statutory factors set forth in Section 8.1(b) of the Act. See 820 ILCS 305/8.1(b) (West 2024). The Commission considers the record as a whole, including Decedent's age and loss of his ability to work as an airline pilot, and awards benefits representing a 30% loss of use of the

¹ See <https://iwcc.illinois.gov/rates05-10.html>.

person as a whole under Section 8(d)(2), constituting 150 weeks at the statutory maximum PPD rate of \$664.72 per week.²

G. Death Benefits

Petitioner also marked death benefits as an issue on the Petition for Review, which refers to Petitioner's February 25, 2020, fatal case claim. The Illinois Appellate Court ruled that the fatal case is barred by the statute of limitations. *Kern*, 2026 IL App (1st) 242383WC-U, ¶¶ 62-65. Accordingly, the claimant is not entitled to an award of death benefits.

H. Penalties and Fees

Decedent further marked penalties and fees as an issue on the Request for Hearing and the Petition for Review. AX1(232-233). Decedent also requested penalties and fees at the arbitration hearing, claiming that a petition must have been filed though none appears of record. Tr. 6-7. Based on the Commission's determinations on the merits, the Commission now considers the claim for penalties and fees, to the extent the issue was raised at arbitration.

Petitioner asserts that statutory penalties and fees should be awarded because: (1) Respondent offered no explanation as to why it cut off TTD payments in 2009; (2) Respondent did not explain why it withheld death benefits from the survivors for four years before hiring Dr. Kessler; and (3) Respondent could not reasonably rely on Dr. Kessler's report. Decedent calculates that he was entitled to \$208,585.72 in penalties under section 19(k) of the Act, the maximum \$10,000.00 in penalties under section 19(l) of the Act, and \$83,434.29 in attorney fees under section 16 of the Act.

The Illinois Appellate Court recently set forth the differing standards applicable to claims for penalties under section 19(l) versus claims for penalties and attorney fees under section 19(k) and section 16 of the Act, as well as its view regarding the burden of proof applicable to each type of claim. *Concrete Structures of the Midwest v. Illinois Workers' Compensation Comm'n*, 2026 IL App (1st) 242493WC, ¶¶ 28-31. The Commission also observes that in general, penalties will not be imposed where the employer reasonably could have believed that the employee was not entitled to compensation. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9 (1982) (citing *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 301 (1980); and *Brinkmann v. Industrial Comm'n*, 82 Ill. 2d 462, 469 (1980)). Although *Brinkmann* stated the rule solely regarding section 19(l) penalties, *Board of Education* and *Avon Products* apply the general rule where the claimant sought penalties under both section 19(k) and 19(l).

In this case, Respondent could reasonably believe that Decedent and Petitioner were not entitled to compensation. Respondent did not believe that Decedent, a traveling employee, sustained an accident arising out of and in the course of his employment. The primary evidence that Decedent struck his head prior to his seizure was an unsigned and undated self-report by Decedent. The federal air marshal witnessed Decedent fall only after suffering his seizure. The initial history given by Decedent when he arrived at Hillingdon hospital the same day was that he

² See <https://iwcc.illinois.gov/rates05-10.html>.

passed out as he had not eaten for two days and had recent problems with his right ear. Some of the Hillingdon hospital records suggested alcohol overuse. Upon arriving at Ivona on July 18, 2008, Mr. Kern specifically reported that he was not sure if he fell and hit his head and then had a seizure. Based on this evidence, the Commission finds Respondent's refusal to pay benefits prior to arbitration was not unreasonable and that Respondent possessed a reasonable legal and medical dispute over whether Decedent suffered a compensable accident in this case despite the fact that Respondent's argument ultimately was rejected by a majority of the appellate court.

Accordingly, the Commission concludes that any delay or denial of payment by Respondent was not unreasonable as that term is understood in the context of section 19(l), and not unreasonable or vexatious as that higher standard is understood in the context of section 19(k) of the Act. Our conclusion that Respondent was not unreasonable and vexatious also defeats the claim for attorney fees under section 16 of the Act. See *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15 (1998). Given the reasonable and good faith dispute over Respondent's liability presented here, the Commission rejects Decedent's claims for statutory penalties and attorney fees, regardless of whether the burden of proof falls on the claimant in the case of section 19(k) penalties and section 16 attorney fees or on the employer for section 19(l) penalties.

Lastly, the Commission recognizes that it is legally barred from taking additional evidence on review from a decision of an arbitrator. 820 ILCS 305/19(e) (West 2024). The parties were given an opportunity to submit briefs on the remaining issues following receipt of the Appellate Court decision and remand order and the Commission has reviewed those briefs giving them all due consideration. To the extent the briefs contain arguments on issues beyond the order of the appellate court, those issues and arguments are moot.

IT IS THEREFORE FOUND BY THE COMMISSION that Decedent sustained a compensable accident on July 17, 2008.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner proved that Decedent's condition of ill-being was causally connected to the accident through May 21, 2015.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Decedent's reasonable and necessary medical expenses pursuant to sections 8(a) and 8.2 of the Act. Respondent is awarded a credit for amounts already paid and no further medical expenses are awarded, based on the stipulation of the Parties. Respondent is ordered to resolve any claim for reimbursement from its group medical plan, pursuant to the stipulation of the parties. Respondent is awarded a credit of \$8,107.17 pursuant to section 8(j) of the Act and the stipulation of the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$1,216.75 per week for 357 weeks, commencing July 18, 2008, through May 21, 2015, as provided in Section 8(b) of the Act. Respondent is awarded a credit for amounts paid and shall hold Decedent's estate harmless for same.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of \$664.72 per week for 150 weeks, because the injuries sustained caused a 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for death benefits is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Decedent's claim for penalties and attorney fees 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.

Bond for the removal of this cause to the Circuit Court 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.

June 24, 2026

r: 06/17/26

CMD/kcb

045

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

/s/ Frank J. Soto
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027381
Case Name	Gaby Sandoval v. Southwest Airlines
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0193
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Frank Kress
Respondent Attorney	Andrew Luther

DATE FILED: 6/24/2026

/s/ Kathryn Doerries, Commissioner

Signature

DISSENT

/s/ Amylee Simonovich, Commissioner

Signature

23 WC 027381

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

GABY SANDOVAL,

Petitioner,

vs.

NO: 23 WC 027381

SOUTHWEST AIRLINES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of temporary total 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas vs. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322(1980).

The Commission affirms and adopts the Arbitrator's Decision in its entirety with the following modifications for the purpose of correcting certain scrivener's errors.

In the Arbitrator's Findings, the Commission strikes the year "2025" in the date of accident and replaces it with the year 2023.

In the Arbitrator's Conclusions of Law regarding Issue L, temporary benefits, the Commission strikes "6/7/2024" in the last sentence on page 8 and replaces it with 6/3/2024.

23 WC 027381

Page 2

The Commission further modifies the Arbitrator's Order regarding prospective medical care, striking "authorize and pay" and replacing it with "provide and pay" and strikes "along with all related services."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner temporary total disability benefits of \$454.60/week for 23-5/7 weeks, commencing June 11, 2023 through October 12, 2023, and June 3, 2024 through July 14, 2024, as provided in §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the reasonable and necessary medical services of \$177.68 to Concentra, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right SI joint injection, as recommended by Dr. Sean Salehi and Dr. Kevin Ladin, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 24, 2026

KAD/swj

O51926

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/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Stephen J. Mathis

Stephen J. Mathis

PARTIAL CONCURRENCE AND DISSENT

I respectfully dissent from the majority's decision to affirm the award of temporary total disability. In my opinion, Petitioner met her burden of proving entitlement to additional temporary total disability benefits through the date of hearing, and I would modify the award of the Arbitrator to extend the TTD period. I otherwise agree with the majority and would also affirm and adopt all else. For this reason, I concur in part and dissent in part.

As the Arbitrator correctly found, Petitioner was initially released to return to work by Dr. Ladin on October 12, 2023, and then excused off work by Dr. Salehi on June 3, 2024. However, I disagree that Dr. Salehi testified that his off-work order was effective for 4 to 6 weeks.

Dr. Salehi performed a Section 12 examination at Petitioner's request on June 3, 2024, and he testified via evidence deposition on July 15, 2025. PX5. His evaluation of Petitioner on June 3, 2024, states, "At this time she should remain off work as she is unable to fulfill her duties as a flight attendant. Such restrictions are as a result of the work injury. Future work restrictions would be at the discretion of pain management." PX 5, DX 2. When asked about the work status he gave, Dr. Salehi testified, "It looks like I kept her off work until she saw the pain doctors." PX 5, p 14. He went on to explain why she required such restrictions:

"So she developed significant symptoms after this hard landing. She hadn't responded well to the conservative care of time, medications and the physical therapy, so she needed escalation of care by way of injections. And until that was done, I felt that it was best for her to be kept off work until – to minimize any further aggravation of the same pathology." PX 5, p 15.

On cross-examination, Dr. Salehi did testify that his work statuses are "usually four to six weeks, that's generally accurate." PX 5, p 24. However, on redirect-examination he clarified:

"Yeah, I mean, I have kept her off work until she sees the pain doctors and gets the treatment I had recommended before any adjustment to the work should be made. So that's why I usually use four to six weeks thinking that she'll be able to make the appointment and get the treatment that she needs within that time period." PX 5, p 25

The Commission adopted Dr. Salehi's opinions as to causal connection and need for prospective medical care, and it should adopt Dr. Salehi's opinion as to Petitioner's off work status pending SI joint injection with pain management.

The parties agree that Respondent did not authorize Petitioner to receive the SI joint injection with pain management as recommended by both Drs. Ladin and Salehi. It was this dispute over provision of prospective medical care that led the case to be tried before the Arbitrator on August 25, 2025.

23 WC 027381

Page 4

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010), citing *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005); *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001). Section 8(b) of the Act provides, "[W]eekly compensation *** shall be paid *** as long as the total temporary incapacity lasts." 820 ILCS 305/8(b). Our Supreme Court has held that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990), citing *McKay Plating Co. v. Industrial Comm'n*, 91 Ill. 2d 198, 209 (1982); *Brinkmann v. Industrial Comm'n*, 82 Ill. 2d 462, 467 (1980); *Health & Hospitals Governing Comm'n v. Industrial Comm'n*, 72 Ill. 2d 263, 273-74 (1978).

The Court in *Interstate Scaffolding* explained exceptions to the rule:

The Act provides incentive for the injured employee to strive toward recovery and the goal of returning to gainful employment by providing that TTD benefits may be suspended or terminated if the employee refuses to submit to medical, surgical, or hospital treatment essential to his recovery, or if the employee fails to cooperate in good faith with rehabilitation efforts. [Citations.] Benefits may also be suspended or terminated if the employee refuses work falling within the physical restrictions prescribed by his doctor. [Citations] But none of these situations exist in this case. *Interstate Scaffolding*, at 146-147.

None of these situations exist in this case. Petitioner was placed off work and accommodation was not refused. Petitioner was not refusing to submit to the prescribed prospective medical care; Respondent was refusing to provide and pay for same. Petitioner was unable to receive the necessary care for her condition to stabilize and reach maximum medical improvement.

It is a well-settled principle that the Act is a remedial statute and should be liberally construed to effectuate its main purpose – providing financial protection for injured workers. *Interstate Scaffolding*, at 149, citing *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 556 (2004). The Act's purpose is not furthered by denying TTD benefits to an injured employee when their employer refuses to provide and pay for medical services, and thereby cannot obtain the care being prescribed to her to stabilize her condition.

The preponderance of the evidence shows that Petitioner was authorized off work by Dr. Salehi on June 3, 2024, until such time as she could see pain management for an SI joint injection. Her condition had not stabilized nor reached maximum medical improvement. No accommodation was refused. She has proven her entitlement to temporary total disability benefits from June 3, 2024 through hearing on August 25, 2025.

/s/ Amylee H. Simonovich

Amylee H. Simonovich

June 24 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027381
Case Name	Gaby Sandoval v. Southwest Airlines
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Frank Kress
Respondent Attorney	Andrew Luther

DATE FILED: 10/21/2025

/s/ Jeffrey Huebsch, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 21 2025 3.66%

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)

Gaby Sandoval

Employee/Petitioner

v.

Southwest Airlines

Employer/Respondent

Case # **23** WC **027381**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **August 25, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 10, 2025**, 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 **\$35,458.28**; the average weekly wage was **\$681.89**.

On the date of accident, Petitioner was **30** 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 **\$17,011.93** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0** for other benefits, for a total credit of **\$17,011.93**.

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, pursuant to the medical fee schedule, of \$177.68 to Concentra, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of \$454.60/week for 23-5/7 weeks, commencing June 11, 2023 through October 12, 2023 and June 3, 2024 through July 14, 2024, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the right SI joint injection, as recommended by Dr. Sean Salehi, and Dr. Kevin Ladin, along with all related services.

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

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

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



Signature of Arbitrator

FINDINGS OF FACT

Petitioner resides in Phoenix, AZ. She is employed by Respondent as a flight attendant. She began working for Respondent in customer service in July of 2018. She began working as a flight attendant at the end of 2022. Petitioner described her job duties as providing emergency assistance to passengers, pulling and closing a 50 pound door, stocking the galley, assisting passengers with carry-ons (weighing as much as 40 to 50 pounds), and serving beverages, trays of which could weigh 5 pounds. (T. 10-15).

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of Petitioner's employment by Respondent on June 10, 2023. Petitioner testified that the plane that she was on had a hard landing in Baltimore. She was seated and belted at the time. She noticed a sharp pain in her lower back "that went all the way up". (T. 16-17). Petitioner worked another flight to Sarasota. She noticed pain in her back at the hotel in Sarasota and sought treatment at Sarasota Memorial Hospital Urgent Care.

Petitioner was seen at Sarasota Memorial at 6:13pm on June 10, 2023. She had complaints of low back pain-lower thoracic, upper lumbar from a rough landing. A thoracic spine x-ray was said to be negative. She was prescribed Naproxen and Flexeril and was discharged at 11:59pm. The discharge diagnosis was: Acute traumatic thoracic and low back pain and associated muscle strain. (PX 1).

Petitioner was flown back to Phoenix by Respondent and began treatment at Concentra, at Respondent's request. She was seen at Concentra on June 11, 2023. The history was of an injury at work, while on a flight to Baltimore. Petitioner had complaints of upper and lower back pain. The physical exam revealed midline thoracic and lumbar tenderness. There was no decreased lumbar range of motion. There was no lower extremity numbness, tingling, or weakness. The assessment was strain of the thoracic spine and strain of the lumbar strain. Medications and physical therapy were ordered. Work restrictions were given. (PX 2, 84-94).

Petitioner received PT at Spooner Avondale in Phoenix from June 20, 2023 through September 20, 2023. (PX 3). At the initial evaluation, the referral diagnosis was low back strain and right sacroiliac instability. (PX 3, 28). At the discharge summary, it was noted that Petitioner had plateaued in progress. She had symptoms consistent with lumbar strain and right sacroiliac instability. Spinal range of motion had improved, but hip flexibility/strength, functional activity tolerance and inability to progress to lifting required for work had not reached anticipated goals. The patient was said to be looking for other pain management methods. (PX 3, 150-153).

Treatment at Concentra continued through November 9, 2023. (PX 2). Petitioner was seen for a Physical Medicine and Rehabilitation consult at Concentra by Dr. Kevin Ladin on September 7, 2023. The physical exam was relatively benign, with full range of motion, 5/5 strength and a normal neurologic exam, but with increased pain with forward flexion, localized in the right sacroiliac region. Dr. Ladin's impression was lumbar sprain/strain and unresolved right sided low back/sacroiliac pain. Dr. Ladin ordered a lumbar MRI and continued work restrictions. (PX 2, 25-27).

The lumbar MRI was done on September 11, 2023, at Diagnostic Radiology-Westgate. It showed mild degenerative changes and a trace disc bulge at L5-S1. (PX 2, 23, PX 4).

Petitioner was next seen by Dr. Ladin on October 12, 2023. Dr. Ladin charted that he previously saw Petitioner on 9/7/2023 and his impression was lumbar sprain/strain. She had complaints of right-sided low back pain. Dr. Ladin said that he reassured her that he didn't see any worrisome pathology. He ordered the MRI to make sure that they weren't missing anything. Dr. Ladin thought that the study was reassuringly negative for any relevant structural pathology that would require interventional treatment or ongoing work restrictions. Petitioner seemed very reluctant to full work status, stating that she cannot tolerate even lifting her young child and did not think that she would be able to tolerate closing the door of the aircraft. Dr. Ladin charted that he explained that the injury occurred 4 months ago and with the normal MRI and normal findings on examination, there was no medical justification for maintaining her on work restrictions at this time. He charted that she understood. Petitioner was released to full duty work on a trial basis, was to continue her home exercise program and to follow up in 4 weeks. Dr Ladin's impression was: 1.) Lumbar sprain/strain; 2.) unresolved right-sided low back/sacroiliac pain; and 3.) Reassuringly negative lumbar MRI findings. (PX 2, 18-20).

Petitioner was last seen by Dr. Ladin on November 9, 2023. This was to be a follow-up visit after her release to full duty work. There is no comment on whether Petitioner had returned to full duty work. Petitioner advised that she was no better. She continued to have right-sided lumbosacral/sacroiliac pain. She denied a radicular component. The physical exam showed full range of motion, with increased pain in the right sacroiliac region on forward flexion. Tenderness was noted in the right sacral sulcus and right lumbar paraspinals. Neurologic and strength testing was normal. Dr. Ladin's impression remained as: 1.) Lumbar sprain/strain; 2.) unresolved right-sided low back/sacroiliac pain; and 3.) Reassuringly negative lumbar MRI findings. Dr. Ladin recommended a fluoroscopically-guided right sacroiliac joint injection for both diagnostic and therapeutic purposes. Petitioner had failed a course of conservative treatment and with the injury occurring 6 months ago, this was the best course of care. Petitioner desired to move forward with this treatment to attempt to bring her symptoms to a more satisfactory and durable resolution. "She fulfills ODG guidelines. The procedure will be scheduled as soon as possible, pending authorization." Full duty work status was continued. Follow-up was scheduled for 4 weeks. (PX 2, 15-16).

No record of any follow-up treatment at Concentra was submitted into evidence and Petitioner testified that the final visit that she had at Concentra was November 9, 2023. (T. 23). Petitioner testified that she saw Dr. Sean Salehi on June 3, 2024. This was the last time that she saw a doctor regarding her back in relation to June 10, 2023 work injury. (T. 23).

Petitioner testified that she sees her PCP to extend her leave at Respondent. Her doctor's name is Kimberly Ariza. (T. 23-24). Neither Party submitted any records from Dr. Ariza.

Petitioner did not testify on direct examination regarding an attempt to return to work at full-duty after being released for same by Dr. Ladin. On cross-examination, Petitioner confirmed Dr. Ladin's release to full-duty work on October 12, 2023. Petitioner testified that she went to recurrent training after the release and that she worked one flight thereafter for Respondent (February 14, 2024?). (T. 29-31).

Neither Party submitted attendance records or other evidence documenting when Petitioner had recurrent training or when she worked as a flight attendant after the full-duty release.

RX 2, the TTD Log, shows that Petitioner was paid TTD from 6/11/2023 through 10/12/2023, as of October 13, 2023 and a later payment of benefits from 10/13/2023 through 1/24/2024 made on January 8, 2024. The total indemnity benefits paid is \$17,011.93, per RX 2 and the stipulation of the Parties.

Petitioner testified that she currently experiences pain in her lower right back. A pinching sensation, a throbbing. "I feel like it's warm, kind of tingling." (T. 24). She has difficulty picking up her two year old. She has difficulty with household tasks and putting on pants. (T. 24-25).

Petitioner has received a recommendation for an SI joint injection. She has not had the injection, as it has been denied by workers' comp. She would like to have the procedure. (T.25-26).

Petitioner denied injuries to her lumbar spine before or after June 10, 2023. (T. 26).

On cross examination, Petitioner agreed that at some point she received TTD benefits for a time that she was working. (T. 32-33).

Petitioner sees her PCP using group benefits from Respondent. She has not sought to have the injections approved by group. (T. 34).

Petitioner was seen by Dr. Singh for an IME. (T. 35).

On redirect examination, Petitioner testified that she has worked 2 days for Respondent after the June 10, 2023 work accident. (T. 36). On re-cross examination, Petitioner said that she told the Concentra doctor that had released her that she was not ready to go back to work, even though he was recommending that she do so. (T. 38-39).

Petitioner was seen by Kern Singh, MD for a §12 examination on January 22, 2024. Dr. Singh testified via evidence deposition on August 1, 2025. (RX 1).

Dr. Singh's report was dated January 25, 2024 and was Exhibit 2 to the evidence deposition transcript. Petitioner gave a history of accident consistent with her testimony and Dr. Singh reviewed records from Sarasota Memorial and Concentra from 6/11/2023 through 11/9/2023. He also reviewed a record from Dr. Ariza from 11/15/2023, diagnosing a herniated disc at L5-S1, referring to integrative medicine, and excusing Petitioner from work. Dr. Singh noted a negative FABER test, and equal strength and reflexes. The diagnosis was lumbar strain, resolved lumbar strain. Petitioner could return to work at full duty, without restrictions and was at MMI. The radiographic studies do not correlate with Petitioner's subjective complaints. Petitioner's treatment was excessive. (RX 1, Ex. 2).

At his deposition, Dr. Singh testified that he is a board-certified orthopedic surgeon, specializing in treating spinal disorders. (6). Petitioner's complaints of 10/10 pain were inconsistent with the MRI and the physical exam. Testing was normal for SI joint dysfunction. The FABER test and the MRI were normal. (9-10). The FABER test is used to diagnose SI joint dysfunction. (10). Dr. Singh would expect findings on the MRI if there was an SI joint injury. Dr. Singh's diagnosis was a lumbar muscular strain and subjective complaints with no objective findings. (11). Dr. Singh endorsed causation as to a muscular strain. He thought that Petitioner was at MMI, could return to work at full-duty and was in need of no further treatment. (12). Dr. Singh thought that Petitioner would not benefit from an SI joint injection, based upon the normal MRI and normal exam. (12-13). On cross examination, Dr. Singh testified that he did not note any symptom magnification by Petitioner. (18).

Dr. Sean Salehi testified via evidence deposition at the request of Petitioner on July 13, 2025. (PX 5). Deposition Exhibit 2 was Dr. Salehi's 6/11/2024 letter to Petitioner's attorney regarding his examination of Petitioner on 6/3/2024. Petitioner gave a history of experiencing pain throughout her entire spine after

a hard landing on June 10, 2023. The physical exam was remarkable for right SI joint tenderness to palpation. The MRI did not show any significant pathology. He thought that Petitioner's pain complaints were likely secondary to SI joint dysfunction, rendered symptomatic by the work injury. Dr. Salehi gave Petitioner a referral to pain management for SI joint injections and prescribed lidocaine patches. She was kept off work and advised that future work restrictions would be given by pain management. She did not need to follow-up with Dr. Salehi. Dr. Salehi's diagnosis was low back pain by way of SI joint dysfunction rendered symptomatic by the work injury by way of SI joint dysfunction rendered symptomatic by the work injury. The diagnosis is causally related to the 6/10/2023 work injury. Petitioner would benefit from 1-2 right SI joint injections rendered by a pain management physician. This treatment is causally related to the work injury. Petitioner should remain off-work as she could not fulfill her duties as a flight attendant. This restriction is causally related to the injury. Further work restrictions would be at the discretion of pain management. (PX 5, 40).

Dr. Salehi testified that he is a board-certified neurosurgeon. (PX 5, 5). He testified consistent with his report. Dr. Salehi testified that a lumbar strain is generally self-limiting, expected to be resolved within weeks. If the condition does not resolve, you have to consider other pathologies. (11-12). Dr. Salehi said that he noted objective findings of tenderness to palpation and some limitation in range of motion. (13). Dr. Salehi endorsed causation as to his diagnosis and Petitioner's symptoms. The mechanism of injury is consistent, in that it would cause stress on the SI joint. The capsule of the SI joint can get stretched by trauma. (13-14). Petitioner should remain off work until seen by pain management. The work restrictions are causally related to the injury. (14-15). The recommended treatment of SI joint injections is causally related to the work injury. (15-16).

On cross examination, Dr. Salehi testified that the lumbar MRI does not really show the SI joint. The better study would be a pelvic MRI. Dr. Salehi did not order a pelvis MRI. (17-18). Dr. Salehi had no opinion regarding Dr. Ladin's full duty release to return to work given in October of 2023. (22). Dr. Salehi saw Petitioner on one occasion and does not have an opinion regarding her current inability to work. (23). His off-work opinion would probably be good for 4-6 weeks. (24).

CONCLUSIONS OF LAW

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

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

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

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

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

Petitioner's current condition of ill-being, to wit: resolved lumbar strain and symptomatic right sacroiliac joint dysfunction, as diagnosed by Dr. Salehi, is causally related to the work injury of June 10, 2023. This finding is based on the testimony of Petitioner, the medical records and the opinions of Dr. Salehi.

Accident was stipulated to. Petitioner was referred to Concentra by Respondent and Dr. Ladin at Concentra, while he released Petitioner to full-duty work, endorsed an SI joint injection on November 9, 2023. There is no evidence as to why the injection was not authorized, other than Petitioner's testimony that the injection was denied by workers' comp. The therapy records and the Concentra records document that right sacroiliac issues were present, along with a benign lumbar exam. Dr. Salehi endorsed causation and explained how the work accident could have caused Petitioner's sacroiliac dysfunction to become symptomatic. He explained how the tenderness to palpation in the right sacroiliac area and the "some limited range of motion" that he noted was objective evidence of sacroiliac joint disfunction. Dr. Salehi's opinions are found to be persuasive.

Dr. Singh's opinion that Petitioner suffered a resolved lumbar strain as a result of the work accident, with no injury to the right SI joint, is not persuasive to the Arbitrator. Dr. Ladin and Dr. Salehi thought that Petitioner had symptomatic sacroiliac joint dysfunction and recommended an SI joint injection. These opinions mesh with the Arbitrator's view of the evidence adduced. Dr. Salehi explained that lumbar strains resolve and, if the patient remains symptomatic, other pathologies should be considered. Dr. Ladin charted the the prescribed SI joint injection comported with ODG guidelines.

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

Petitioner claimed that Respondent was liable for an unpaid medical bill from Concentra, in the amount of \$177.68. (ArbX 1). PX 2 is the records of Concentra, including the bills. It appears that the claimed \$177.68 is for balances of \$88.84 for the charges for visits to Dr. Ladin on 10/12/2023 and 11/9/2023. (PX2, 106-107).

The Concentra bill, in the amount of \$177.68, is awarded, pursuant to the Medical Fee Schedule and Sections 8(a) and 8.2 of the Act. If the \$177.68 is not due under Section 8.2, then Respondent's obligation for the Concentra bill is satisfied by its payments as shown in RX 3 and PX 2

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?, THE ARBITRATOR FINDS:

Based upon the Arbitrator's findings on the issue of causation, above, Respondent shall authorize and pay for the right SI joint injection recommended by Dr. Salehi and Dr. Ladin, along with all related services, in accordance with Sections 8(a) and 8.2 of the Act.

Respondent should have authorized the injection in 2023, when Dr. Ladin, a specialist at the clinic that Respondent referred Petitioner to, recommended it. If a clinic is good enough to send your employees to for treatment, then a physician's order from that clinic should be authorized, especially if the recommended treatment is consistent with ODG guidelines.

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

Respondent stipulated that Petitioner was entitled to TTD benefits from 6/10/2023 through 10/12/2023, a time period of 17-5/7 weeks. Petitioner claimed TTD from 6/11/2023 through 8/25/2023, a time period of 115-2/7 weeks. (ArbX 1).

In making his finding on the issue of TTD (and, of course, all other issues), the Arbitrator notes the admonition of 820 ILCS 305/1.1(e), that Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed.

Petitioner is not entitled to TTD for June 10, 2023. This is the date of the stipulated work accident and Petitioner's testimony was that she worked her full shift and did not seek treatment until her scheduled work as a flight attendant had ended.

The medical records and Respondent's stipulation support an award of TTD from 6/11/2023 to 10/12/2023 (the date that Dr. Ladin released Petitioner to return to work at full duty). This time period is 17-5/7 weeks.

Petitioner did not testify that she returned to work after Dr. Ladin released her to do so on direct examination. She did concede that she returned to work for recurrent training (1 day in October/ November of 2023?) and flew one flight for Respondent on February 14, 2024 on cross examination. Neither Party submitted attendance records. Of course, both Petitioner and Respondent had knowledge of when Petitioner was in recurrent training and when she worked as a flight attendant after being released to full duty work and the proofs that they provided the Arbitrator were less than optimal.

It is axiomatic that Petitioner has the burden of proving all of the elements of her claim. O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980). She has not proved an entitlement to TTD after Dr. Ladin's release to return to work on 10/12/2023, until she was again excused off work by Dr. Salehi on 6/3/2024. Dr. Salehi testified that his off-work order was effective for 4 to 6 weeks.

Based on the Arbitrator's finding on the issue of causation, and relying on Dr. Salehi's opinion, Petitioner is entitled to TTD for 6 weeks, from 6/3/2024 through 7/14/2024.

Accordingly, Respondent shall pay Petitioner TTD benefits of \$454.60/week, 23-5/7 weeks, commencing 6/11/2023 through 10/12/2023 and 6/3/2024 through 7/14/2024, in accordance with Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC003502
Case Name	Christopher Mix v. Clinton Community School District
Consolidated Cases	
Proceeding Type	Remand from the Circuit Court
Decision Type	Commission Decision
Commission Decision Number	26IWCC0194
Number of Pages of Decision	6
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Todd Strong
Respondent Attorney	Francis O'Byrne

DATE FILED: 6/25/2026

/s/ Frank Soto, Commissioner

Signature

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	)SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF PEORIA	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
	)	☐ Modify	☐ PTD/Fatal denied.
		☒ ON REMAND FROM CIRCUIT COURT	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER MIX,

Petitioner,

vs.

NO: 17 WC 003502

2024 MR 11

CLINTON COMMUNITY
SCHOOL DISTRICT,

Respondents.

DECISION AND ORDER ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Dewitt County. In accordance with the Circuit Court Order filed on December 4, 2025, the Commission on remand makes a specific finding as to the proper calculation of the award of medical expenses, reduced to dollar amount, pursuant to the applicable fee schedule and rules on Petitioner's motions for penalties and fees and interest.

I. PROCEDURAL BACKGROUND

This matter first came before the Commission on Petitioner's Petitions for post-decision penalties, and fees, for interest on the Commission award, and for disqualification of the insurer to write Workers' Compensation insurance in Illinois pursuant to §4(c) of the Act. A hearing on the Petitions was held in Peoria on May 9, 2024. At the time of the hearing, Petitioner's §4(c) petition for disqualification of the insurer was, per pretrial discussion and agreement, set aside and not argued at the 5/9/24 hearing, and subsequently denied in the Commission's 12/9/24 Order. This petition and denial thereof were not included in the Circuit Court's remand order of December 4, 2025 and is therefore not considered here. Following the May 9, 2024 hearing, an Order was issued on December 9, 2024.

The Commission's December 9, 2024 Order was thereafter subject to administrative review in the Circuit Court of DeWitt County, and a hearing was held before the Honorable Karle E. Koritz, Circuit Judge, on December 3, 2025. Judge Koritz issued an Order dated December 4, 2025, reversing the December 9, 2024 Order from the Commission and remanding for further proceedings, with instructions that the Commission was to make a specific finding as to the proper calculation of the award of medical expenses, reduced to dollar amount, pursuant to the applicable fee schedule, and upon making such finding, the Commission was to rule on Petitioner's motions for penalties, fees, and interest. The Circuit Court's Order further states, "[t]his Court provides no comment or restrictions at this time concerning the lawful discretion of or procedure employed by the Commission in making such a finding."

II. FINDINGS OF FACT

The Commission acknowledges that it is bound by the record before it in the form of evidence submitted by the parties at the hearing of May 9, 2024, and thus the Commission will neither introduce new facts into the record nor extend the reach of judicial notice to achieve the same effect. In so stating, the Commission finds that the evidentiary record in this case includes sufficient information regarding the fee schedule amount for the various medical charges, as well as the basis for the fee schedule calculation included in the several analyses in evidence, in order to comply with the Circuit Court's Order.

Accordingly, the Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decisions filed on March 18, 2022, to the extent they do not conflict with the Commission's Decision and Opinion filed on December 9, 2024, to the extent these decisions do not conflict with the Circuit Court of Cook County's Order filed on December 4, 2025. The Commission also incorporates by reference the December 4, 2025, Circuit Court Order.

III. CONCLUSIONS OF LAW

In an effort to comply with the Circuit Court order on remand, the Commission is charged with following the court's order. *See Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. The Commission initially observes that a reviewing court's mandate vests a lower court with jurisdiction only to take action that complies with the reviewing court's mandate. *See Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id.* If the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. *Id.*

A. FEE SCHEDULE MEDICAL EXPENSES

On remand, the Commission has been instructed to make a specific finding as to the proper calculation of the award of medical expenses, reduced to dollar amount, pursuant to the applicable fee schedule. In complying with the Order, the Commission acknowledges that the Circuit Court Order also "provides no comment or restrictions at this time concerning the lawful discretion of or procedure employed by the Commission in making such a finding."

The Commission has thoroughly reviewed and compared the Coventry Explanations of Review (“EORs”) (Deposition Exhibit 7, under Respondent’s Exhibit 5), the Rising EORs (Respondent’s Exhibit 8), Petitioner’s analysis (Petitioner’s Exhibit 4B), Dr. Kube’s letter dated March 19, 2024 (Petitioner’s Exhibit 8), as well as all other non-rejected exhibits. The Commission has also assessed the basis for each stated allowance by comparing the large body of testimony and documentary evidence in order to assess the reliability of each allowance calculation and determine which fee schedule allowance was the most reliable and fair for each individual line item and/or medical charge. Based on the Commission analysis of this evidence, the Commission concludes that the award of medical expenses pursuant to the fee schedule is \$116,642.94. Further, the Commission finds that Respondent is entitled to a credit of \$103,644.00 for awarded medical expenses that Respondent paid to Petitioner following the Commission’s May 15, 2023 decision and award.

B. PETITION FOR PENALTIES, FEES, AND INTEREST

On remand, the Commission has been instructed to rule on Petitioner’s motions for penalties and fees and interest upon making a finding of the proper calculation of medical expenses awarded.

The Commission observes that Petitioner moved for penalties and fees against Respondent pursuant to §19(k) and §16 on the basis of an alleged underpayment of the award for medical bills, citing the difference between the Petitioner’s view of the fee schedule amount and the payment of \$103,644.00 issued by Respondent. Based on the totality of evidence, the Commission finds the dispute between the parties as to the proper fee schedule to be in good faith on both sides.¹ The Commission does not view the overall record as showing any willful and vexatious delay in payment by Respondent, which issued its payment to Petitioner within 30 days of the Commission’s May 15, 2023 decision, and declines to award penalties and fees under §19(k) and §16 as to the overall difference of \$12,998.94 between the Commission’s fee schedule valuation of \$116,642.94 and the payment issued by Respondent in the amount of \$103,644.00.

However, in the course of its evaluation of the submitted fee scheduled analyses, the Commission notes a subset of medical bills, totaling \$5,621.65 under the fee schedule, which were included in the award, included in the billing records in evidence, and included in Petitioner’s fee schedule review, but were not included in the fee schedule reviews obtained by Respondent.² The

¹ For instance, the 5/22/17 surgical implants including in the billing for Prairie Surgicare (“PSC”) which were the subject of much spirited argument at hearing and in the parties’ briefs. Coventry allowances for these items are found on page 1641 of the 5/9/24 hearing transcript within the Explanation of Review (“EOR”) for PSC’s billing. This EOR states the “date processed” as 1/11/22, just prior to trial on 1/27/22. The EOR states a total allowance of \$48,125.16 for PSC’s billing, which includes the three surgical implants at values of \$3,461.25, \$8,127.37, and \$3,015.34 respectively. Following the Commission’s 5/15/23 decision, Respondent issued payment to Petitioner within 30 days (RX10). On 7/20/23 Petitioner’s counsel issued payment to PSC in the amount of \$48,987.92. While not dispositive, it appears to the Commission that the surgical implants were properly paid all along, as Respondent advised Petitioner by email on June 8, 2023 (RX1, sub-exhibit 10).

² Namely: Fort Jesse Imaging 11/14/16; Decatur Memorial Hospital 11/9/16; Orthopedic & Shoulder Center 4/5/17, 6/6/17, 6/13/17, 6/15/17, 6/29/17, 7/11/17, 7/13/17, 7/18/17, 7/20/17, 7/25/17, 7/27/17, 8/1/17, 8/3/17, 8/7/17, 8/14/17, 8/21/17, 8/29/17, 9/13/17, 9/26/17 and 10/24/17; OSF Medical Group 9/8/16, 11/14/16, 12/12/16 and

Commission finds the absence of these bills from Respondent's reviews is an egregious oversight, and no reasonable explanation is provided within the record. Therefore, the Commission awards §19(k) penalties of 50% of \$5,621.65, or \$2,810.83, and §16 attorney's fees of 20%, or \$1,124.33.

Finally, the Commission notes that Petitioner also moved for assessment of interest pursuant to §8.2(d)(3), alleging such interest after judgment should be set at \$494.23 per month, based upon 1% of the 49,423.45 difference between Petitioner's alleged fee schedule total of \$153,067.59 and Respondent's tender of \$103,644.00 in payment. Respondent tendered that payment to Petitioner's counsel in a check dated May 22, 2023, although the Commission notes that the image of this check in evidence as RX10 shows a "Posted Date" of June 12, 2023. The latter date of June 12, 2023 will be considered the date of actual issuance of this payment.

As found by the Commission above, the fee schedule total is \$116,642.94, resulting in a difference of \$12,998.94 over the \$103,644.00 payment tendered by Respondent on June 12, 2023. 1% of this difference is \$129.99. The Commission hereby awards interest pursuant to §8.2(d)(3) in the amount of \$129.99 monthly, commencing on July 12, 2023 per that Section's direction that "Any required interest payments shall be paid within 30 days after payment." 820 ILCS 305/8.2(d)(3).

In conclusion, on remand and pursuant to the Circuit Court Order, the Commission awards \$116,642.94 in medical expenses pursuant to the fee schedule. The Commission also orders that Respondent is entitled to credit for medical expenses paid in the amount of \$103,644.00. Moreover, pursuant to §8.2(d)(3), the Commission also orders Respondent to pay interest to Petitioner of \$129.99 per month, commencing on July 12, 2023. Finally, the Commission awards penalties under §19(k) in the amount of \$2,810.83 and attorney's fees under §16 in the amount of \$1,124.33.

In all other respects, the Commission affirms and adopts the Circuit Court Order on Remand.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$12,998.94 representing the \$116,642.94 fee schedule award less credit to Respondent of \$103,644.00 for payment previously issued on June 12, 2023.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner interest in the amount of \$129.99 per month, commencing on July 12, 2023, pursuant to §8.2(d)(3).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner penalties of \$2,810.83 pursuant to §19(k) and attorney's fees of \$1,124.33 pursuant to §16.

2/15/17; PSPI 5/26/20 and 5/4/17; and Prescription Partners 4/5/17. As Petitioner's fee schedule review was the only submitted review to include these bills, the Commission accepts the total allowance of \$5,621.65 calculated therein.

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

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.

June 25, 2026

r: 6/17/26

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	25WC005611
Case Name	Patrick McKinney v. Pomp's Tire Service
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0195
Number of Pages of Decision	18
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Laura Cole
Respondent Attorney	Lindsey Heidel

DATE FILED: 6/26/2026

/s/Frank Soto, Commissioner

Signature

25 WC 5611

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK MCKINNEY,

Petitioner,

vs.

NO: 25 WC 5611

POMP'S TIRE SERVICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by 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 September 24, 2025 is hereby affirmed and adopted.

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

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

25 WC 5611

Page 2

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$10,000.00. 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.

JUNE 26 2026

O: 5/13/26

FJS/mek

046

/s/ Frank J. Soto
Frank J. Soto

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC005611
Case Name	Patrick McKinney v. Pomp's Tire Service
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Laura Cole
Respondent Attorney	Lindsey Heidel

DATE FILED: 9/24/2025

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 23 2025 3.71%

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)

Patrick McKinney

Employee/Petitioner

v.

Pomp's Tire Service

Employer/Respondent

Case # **25** WC **005611**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **8/20/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/31/23**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$41,185.89 (50 weeks)**; the average weekly wage was **\$823.72**.

On the date of accident, Petitioner was **67** years of age, **single** with **0** dependent children.

Issue of payment of reasonable and necessary charges for all reasonable and necessary medical services was reserved.

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 authorize and pay for the treatment recommended by Dr. Ungacta, specifically left knee replacement surgery and post operative care.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

SEPTEMBER 24 2025

PROCEDURAL HISTORY

This matter proceeded to trial on August 20, 2025, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's current left knee condition, specifically as it pertains to the need for prospective medical treatment and 2) entitlement to prospective medical care to the Petitioner's left knee. The parties agreed to reserve the issue of liability for unpaid medical bills.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 67 years old and employed by the Respondent maintaining and repairing retread equipment. (AX1, T. 10) On July 31, 2023, he was working on a builder, which applies tread, when he stepped on a piece of poly, which covers the tread, and slipped. (T. 11) His leg went under the builder and landed on a pallet, causing his left knee to hyperextend. (T. 11-12) He testified that he experienced immediate stabbing pain in the knee joint. (T. 12)

The Petitioner acknowledged having treatment for his knees before the accident, consisting of injections from his primary care provider, which he said helped him. (T. 16) The Petitioner said he received the injections every six months because he was kneeling on concrete while working. (Id.) The Petitioner thought he started having injections around 2020 and had three in his left knee. (T. 21) He testified that before the work accident, he had never seen an orthopedic doctor for his knees, never had his knee drained, and no doctor had recommended a knee replacement. (T. 16-17) Records of the prior treatment were not submitted at arbitration.

The morning after the accident, the Petitioner's boss took him to Concentra, where he saw Dr. Jessica Cox, a family medicine physician. (T. 12, PX2) An examination showed a large

effusion of his left knee and inability to fully flex his knee without discomfort. (PX2) X-rays showed moderate narrowing at the patellofemoral and medial joint space with osteophyte formation at the medial femoral articular margin. (Id.)

Dr. Cox diagnosed left knee strain that was work-related. She prescribed anti-inflammatories, an oral steroid and muscle relaxant and provided a hinged knee brace. (Id.) She ordered physical therapy and gave work restrictions. (Id.)

The Petitioner underwent physical therapy at Concentra from August 1, 2023, through August 23, 2023, for a total of 10 visits. (Id.) The Petitioner testified that he did not feel any relief of his pain from physical therapy. (T. 22) At follow-up visits to Dr. Cox during this time, the Petitioner reported worsening pain, swelling of the knee and some instability. (PX2) On August 10, 2023, Dr. Cox ordered an MRI. (Id.) On August 17, 2023, she referred him to orthopedic surgery. (Id.)

The MRI was performed on August 18, 2023, by radiologist Dr. Albert Hammerman at Metro Imaging. (Id.) It showed a medial meniscus tear, quadriceps tendinopathy and arthritic changes. (Id.)

On September 21, 2023, the Petitioner saw Dr. Jason Browdy, an orthopedic surgeon at Motion Orthopaedics. (RX1, Deposition Exhibit 2) Dr. Browdy took a history, examined the Petitioner and reviewed the MRI, which he said showed a small joint effusion, a very large popliteal cyst and significant degenerative changes of the medial compartment with complete loss of articular cartilage throughout most of the compartment and subchondral bone marrow edema of the femur and tibia anterior medially. (Id.) He also noted a minor irregularity near the root of the medial meniscus consistent with a partial tear. (Id.)

Dr. Browdy diagnosed chronic and preexisting left knee arthritis, work-related temporary aggravation of left knee arthritis and a popliteal cyst likely secondary to the aggravation of the arthritis. (Id.) He performed a corticosteroid injection. (Id.) He did not believe the work injury changed the reality that the Petitioner would eventually require total knee replacement, which he said was true both before and after the work injury. (Id.) He did not believe “in any way” that the work incident accelerated the need for a knee replacement. (Id.) He gave the Petitioner a compression stocking the help reduce the size of the cyst and gave work restrictions. (Id.)

The Petitioner followed up with Dr. Browdy on October 5, 2023, and reported improvement in his knee swelling but still had moderate knee pain. (Id.) He said he was unable to be on his feet more than three to four hours at a time due to increased pain. (Id.) Dr. Browdy recommended a medial unloader brace that he considered necessary to address the aggravation of the Petitioner’s underlying condition. (Id.)

On November 9, 2023, the Petitioner reported to Dr. Browdy that he was functioning well in the brace, but, when he removed it, he had pain with standing. (Id.) Dr. Browdy believed that the Petitioner had undergone sufficient workup and treatment of any and all work-related conditions and did not need any additional treatment as a result of the work injury. (Id.) He returned him to full duty work. (Id.)

The Petitioner testified that the brace didn’t relieve the pressure on his knee. (T. 13-14) When questioned about reporting functioning well with the brace on November 9, 2023, he said that was not still true. (T. 22) The Petitioner said he asked the Respondent to send him to another doctor. (T. 14)

On December 13, 2023, the Petitioner presented to Dr. Mark Miller, an orthopedic surgeon at The Orthopedic Center of St. Louis. (RX3) Dr. Miller reviewed medical records and performed

an examination. (Id.) He read the MRI as showing edema changes of the anteromedial aspect of the tibial plateau and medial femoral condyle, a diminutive medial meniscus that was mildly extruded, intact lateral meniscus and cruciate ligaments and subchondral changes of the lateral patellofemoral joint. (Id.)

Dr. Miller diagnosed post-traumatic left knee effusion and medial and patellofemoral compartment degenerative joint disease. (Id.) He said the MRI showed bone bruising or subchondral edema anteriorly that may come from the work injury or articular cartilage loss and force transmitted to bone. (Id.) He said that given the mechanism of injury, he would imagine this was more likely due to a bone bruise than trauma. (Id.) He thought a repeat MRI “would be helpful to show that the bone bruise has resolved, bone bruise directly the result of the hyperextension injury at work.” (Id.) He said that if the MRI is reflective of arthritis changes, he would imagine the subchondral changes would be unchanged. (Id.)

Dr. Miller noted that the Petitioner continued to have significant issues with the Baker’s cyst and effusion that the Petitioner indicated were not present prior to the work injury. (Id.) Dr. Miller thought it was reasonable that this be assessed and interpreted as a post-traumatic synovitis/effusion. (Id.) He believed aspiration and a cortisone injection would be helpful. (Id.)

On January 15, 2024, the Petitioner returned to Dr. Miller, who reviewed an MRI performed that day and noted significant improvement in the edema of the medial femoral condyle and medial tibial plateau. (Id.) He said the Petitioner still had a very prominent popliteal cyst and a moderate-to-large size effusion. (Id.) He said the MRI confirmed the work injury as “being the culprit” and the effusion and Baker’s cyst would be considered post-traumatic. (Id.) He recommended aspirations and cortisone injections to be performed by Dr. Matthew Bayes, a sports medicine physician at Bluetail Medical Group. (Id.)

Dr. Bayes' records were not submitted as evidence at arbitration. However, a later records review from the Section 12 examiner, Dr. Lyndon Gross, an orthopedic surgeon at Ortho Mo, stated that the aspiration and injection was performed on July 10, 2024. (RX2, Deposition Exhibit 2) The Petitioner testified that the procedures "did almost no good." (T. 14)

The Petitioner acknowledged that he had no treatment between January 15, 2024, and July 10, 2024. (T. 23) He said this was due to not getting "ahold" of the "lady from workers' comp," who was supposed to send him to another doctor. (T. 27-28)

Due to Dr. Miller's retirement and upon referral by the "workers' comp" nurse, the Petitioner saw Dr. Felix Ungacta, an orthopedic surgeon at Midwest Bone and Joint Surgery, on July 29, 2024. (T. 24, PX1, Deposition Exhibit 2) Dr. Ungacta performed an examination, took X-rays and performed a cortisone injection. (Id.) On the January 15, 2024, MRI, Dr. Ungacta noted a medial meniscus tear. (Id.) X-rays showed complete loss of medial tibiofemoral joint space, well-maintained lateral joint space and significant involvement of patellofemoral joint space with loss of joint space. (Id.) An ultrasound showed large effusion. (Id.)

Dr. Ungacta diagnosed left knee osteoarthritis primarily in the medial and patellofemoral compartments and aggravation of underlying osteoarthritis due to a work-related injury. (Id.) He prescribed topical and oral anti-inflammatories and physical therapy. (Id.)

At a follow-up visit on August 12, 2024, the Petitioner reported only two days of pain relief with return of effusion following the injection. (Id.) Dr. Ungacta recommended continued physical therapy and weekly viscosupplementation injections. (Id.)

On September 3, 2024, the Petitioner reported that physical therapy helped a lot. (Id.) Dr. Ungacta performed the first of five weekly injections that day. (Id.) He performed the other

injections on September 10, 2024; September 17, 2024; September 24, 2024; and October 1, 2024. (Id.) The Petitioner testified that the injections helped for a day or two. (T. 15)

The Petitioner returned to Dr. Ungacta on November 24, 2024, and reported that his knee pain started returning after five weeks and progressively got worse, specifically at the end of the day after working. (Id.) Dr. Ungacta performed another cortisone injection. (Id.) He stated that the Petitioner's symptoms were no longer manageable through conservative measures and recommended a total knee replacement for longer-term relief and restoration of functional capacity. (Id.) While awaiting approval of surgery, Dr. Ungacta performed another cortisone injection on February 11, 2025. (Id.)

On March 24, 2025, the Petitioner underwent the Section 12 examination by Dr. Gross. (RX2, Deposition Exhibit 2) Dr. Gross read the August 18, 2023, MRI as showing complex tearing of the posterior horn and body of the medial meniscus with a radial tear adjacent to the posterior meniscal root and horizontal cleavage tear of the remaining posterior horn and body of the meniscus. (Id.) He found areas of full-thickness cartilage (loss) from the medial femoral condyle and medial tibial plateau with underlying subchondral edema in the medial femoral condyle and medial tibial plateau. (Id.) He noted full-thickness cartilage loss from the patella and trochlear groove with underlying subchondral edema in the patella and lateral trochlear groove. (Id.) He said there was a large joint effusion with a large popliteal cyst. (Id.) He made the same findings on the January 15, 2024, MRI. (Id.)

Dr. Gross diagnosed left knee osteoarthritis. (Id.) He said his examination showed an effusion of the knee, a varus deformity "of his knee pain," pain with provocative signs for meniscal or cartilage pathology and tenderness to palpation over the anterior aspect of the knee. (Id.) Dr. Gross believed the Petitioner's left knee osteoarthritis was triggered or precipitated to become

symptomatic by his work-related injury but did not believe it was caused by the work-related injury. (Id.) Nor did he believe the injury accelerated “this process.” (Id.) He believed the Petitioner’s disability was related to the underlying left knee osteoarthritis and not related to the July 31, 2023, work injury. (Id.) He said the tearing of the medial meniscus “would be” pre-existing and not caused by the work injury. (Id.)

Regarding treatment, Dr. Gross believed the evaluation at Concentra, MRI scan, evaluation by Dr. Browdy, evaluation and MRI by Dr. Miller and aspirations and injections by Dr. Bayes were appropriate and necessary as related to the work injury. (Id.) He did not believe Dr. Ungacta’s treatment was causally related to the work injury but was “more related” to the underlying left knee osteoarthritis. (Id.) As to future treatment, Dr. Gross did not believe the Petitioner needed further management of his left knee, including medications, was related to the work injury. (Id.) He believed any other treatment at that point, specifically surgery recommended by Dr. Ungacta, would be related to the osteoarthritis. (Id.)

As to whether the Petitioner reached the end of healing for the original work injury, Dr. Gross said the injury may have triggered or precipitated the osteoarthritis to become symptomatic, which would be treated with corticosteroid injection, nonsteroidal anti-inflammatory and physical therapy or a home exercise program. (Id.) He anticipated that with this treatment, the Petitioner would have improvement and return to baseline over the span of six to eight weeks. (Id.) He believed the Petitioner was at maximum medical improvement after his visit to Dr. Browdy on November 9, 2023. (Id.)

On April 2, 2025, the Petitioner followed up with Dr. Ungacta, who performed another injection. (PX1, Deposition Exhibit 2) Dr. Ungacta noted that the Petitioner continued to have

significantly large effusion as well as pain. (Id.) Dr. Ungacta performed another injection on June 30, 2025. (Id.)

Dr. Browdy testified consistently with his records at a deposition on July 10, 2025. (RX1) When asked on cross-examination if it was correct that he cited in his report that the Petitioner requiring knee injections the Petitioner every six months for the three years prior to the accident was support for his conclusion that the work accident played no part in the need for a knee replacement, Dr. Browdy stated: “I wouldn’t say it that way. I would say it supports the fact that this gentleman as chronic long-term arthritis.” (Id.) He acknowledged that he did not review records of the injections prior to the work accident, nor did he review records that suggested the Petitioner needed a knee replacement. (Id.) He said that he thought that the injections the Petitioner received before the accident helped him have enough relief to be able to do his job. (Id.)

Dr. Ungacta testified consistently with his records at a deposition on July 18, 2025. (PX1) He opined that the work injury “started this whole spiral of a symptomatic knee that had arthritis prior to his injury that required more and more treatment that wasn’t working.” (Id.) He said that, objectively, the Petitioner had a large amount of fluid in his knee, even with work restrictions, that kept the Petitioner coming back to have it drained. (Id.) He said that the only thing that is going to help the Petitioner was a knee replacement. (Id.) He said that in his 20 years of experience, he had many patients who come in once or twice a year for an injection for many years, and a good number don’t ever need to have surgery. (Id.)

On August 7, 2025, Dr. Gross testified consistently with his report. (RX2) He said that, other than joint effusion, he did not see any acute injury to the knee on the X-rays or MRIs. (Id.) He believed that, although it would be unrelated to the work injury, a total knee replacement would be reasonable. (Id.)

On cross-examination, Dr. Gross acknowledged that he had not reviewed any medical records that predated the work accident. (Id.) He did not know what the Petitioner's level of functioning was before the accident. (Id.)

The Petitioner testified that he was able to perform his full duties before the accident but was not able to afterwards. (T. 17) He said that even while working light duty since July 31, 2023, he has difficulty walking to his office, having to stop three to five times to rest his knee. (Id.) He said that before the accident, he could run, climb ladders and drive a racecar. (T. 18) He said he can't kneel down under a piece of equipment or crawl into chambers at work. (T. 29)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. His testimony was consistent with his reports to the medical providers, and those reports were consistent among themselves.

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that “a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee’s current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” *St. Elizabeth’s Hospital*, 371 Ill.App.3d at 888.

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

The Petitioner had pre-existing arthritis in his knee that necessitated regular injections prior to the work accident. Dr. Browdy characterized the work injury as having caused a temporary aggravation of the Petitioner’s arthritis. Dr. Gross believed the work injury caused the Petitioner’s left knee osteoarthritis to be triggered and become symptomatic did not believe his condition was caused by the work-related injury, nor that the accident accelerate the process. Dr. Ungacta opined that the work injury started a spiral of a symptomatic knee that had arthritis prior to his injury that required more and more treatment that wasn’t working.

Of all of the doctors’ opinions, Dr. Ungacta’s more closely align with Illinois law – that the work accident only has to be “a cause” of the Petitioner’s current condition. Dr. Browdy’s opinion that the Petitioner suffered only a “temporary” aggravation of his arthritis is inconsistent with the evidence that the Petitioner’s condition has not improved despite two years of treatment.

Dr. Gross said the accident triggered the symptomatic condition of the Petitioner's knee but did not cause it. The Arbitrator finds Dr. Ungacta's opinions to be more persuasive.

In addition, there was no evidence that, prior to the work accident, there was any contemplation of or recommendation for knee surgery. As Dr. Gross pointed out, the injections the Petitioner was receiving before the accident gave him enough relief to do his job. However, the injections the Petitioner received afterwards did not have the same effect, and he never returned to his baseline condition as it existed before the accident.

The circumstantial evidence supports a conclusion that the accident was a causative factor in the development of the Petitioner's current condition. Prior to the accident, the Petitioner was able to perform manual duties – walking long distances, climbing ladders, kneeling and crawling – but was unable to do so afterwards.

Therefore, the Arbitrator finds that the Petitioner's current left knee condition is causally related to the work accident.

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

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

Aside from differing causation opinions, the doctors agreed that the Petitioner needs a knee replacement. Based on the findings above regarding causation and the fact that the Petitioner has undergone conservative treatment for two years without returning to his baseline condition, the Arbitrator finds that a total knee replacement is reasonable and necessary.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically a total knee replacement as recommended by Dr. Ungacta. The Respondent shall authorize and pay for such.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012709
Case Name	Todd Holder v. City of Edwardsville
Consolidated Cases	24WC012716
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0196
Number of Pages of Decision	28
Decision Issued By	Kathryn Doerries, Commissioner, Stephen Mathis, Commissioner

Petitioner Attorney	Nathan Becker, Mary Massa
Respondent Attorney	Andrew Keefe

DATE FILED: 6/30/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

24 WC 12709

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Holder,

Petitioner,

vs.

NO. 24WC012709

CITY OF EDWARDSVILLE,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 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 12709

Page 2

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

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

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.

June 30, 2026

O: 05/05/26

SJM/sj

044

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich

Amylee H. Simonovich

DISSENT

I respectfully disagree with the majority's decision affirming the prospective medical care awarded for the four-level cervical disc replacement surgery recommended by Dr. Gornet. Under Section 8(a) of the Act, claimants are entitled to receive medical benefits for all necessary medical and surgical services so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a). As discussed in greater detail below, Petitioner has failed to show the proposed four-level disc replacement surgery is reasonably required. Petitioner is not suffering from any significant functional deficits and the neurological findings are few. Though Dr. Gornet noted diminished sensation in the left upper extremity, he found sensory change involving only two dermatomes supplied by the C7 and C8 nerve roots and no sensory changes involving the other disc levels. Repeated examinations of Petitioner's motor function and reflexes were within normal limits, and there were no abnormal findings with the Spurling's test. There was also no objective medical evidence demonstrating that all four discs are pain generators as Dr. Gornet failed to correlate Petitioner's symptoms with appropriate diagnostic testing as injections were limited to two disc levels and no EMG/nerve conduction testing was ordered. Additionally, the Food and Drug Administration (FDA) has not approved any disc prosthesis currently on the market for use in more than two contiguous disc levels. Furthermore, current FDA approval for cervical disc replacement is restricted to the cervical disc levels between C3-C4 and C6-C7. FDA approval has not been given for disc replacement at C7-T1, which is one of the discs Dr. Gornet proposes to replace. The record lacks evidence demonstrating a generally accepted consensus supporting the off-label use of artificial disc devices for three- and four-level

procedures. As such, Dr. Gornet has not provided a sufficient medical rationale for operating at all four levels and he has not credibly shown that the potential benefits outweigh the risks. Finally, this Commission has previously denied prospective medical care benefits for four-level and three-level disc replacement surgeries, and absent new peer-reviewed research studies and objective medical evidence confirming all disc levels are pain generators, I see no reason to depart from those prior decisions. I believe this Commission is obliged to have consistency in its decisions.

On June 25, 2024, Petitioner presented to Dr. Gornet complaining of neck and back pain which began at work on May 4, 2024. Petitioner described pain at the base of the neck and left trapezius, and pain in the left shoulder extending into the left scapula and upper arm with tingling down the arm to his ring finger. (PX1 at 1) On examination, Petitioner was found with 5/5 motor strength in all groups. (PX1 at 2) Dr. Gornet did not detect any significantly abnormal deep tendon reflexes involving the upper extremity. Dr. Gornet did not document a positive Spurling's test. In fact, there is nothing in his office visit notes showing he performed a Spurling's test. Dr. Gornet's only objective neurological finding was diminished sensation involving the C7 and C8 dermatomes on the left side. He did not mention any abnormal sensory findings involving any other disc root levels. Dr. Gornet reviewed the cervical x-rays and noted loss of disc height at C5-C6 and C6-C7. Dr. Gornet also reviewed the cervical MRI and noted the imaging showed multi-level degenerative disc pathology bilaterally at C4-C5, C5-C6, C6-C7, and C7-T1 with left-sided extruded disc at C7-T1. (PX1 at 3) Dr. Gornet diagnosed an aggravation of preexisting condition with acute disc injury at C6-C7 and C7-T1. There was no diagnosis given for radiculopathy. Dr. Gornet surmised that Petitioner's axial neck pain may emanate from each of those four disc levels and commented that C3-C4 may also be a potential source of pain. He referred Petitioner to Dr. Blake for steroid injections at two levels, C6-C7 and C7-T1.

On July 9, 2024, Dr. Blake administered an epidural steroid injection at C7-T1, and on July 23, 2024 she administered an injection at C6-C7. At trial, Petitioner agreed his pain level prior to the first injection was a 3/10 if that's what the medical records showed. (T. 45) Per Dr. Blake's procedure reports, she documented a 0/10 pain level after the first injection and a 2/10 pain level after the second injection. (PX2 at 2, 15) Petitioner disputed Dr. Blake's documented post-injection pain levels, explaining that with each injection he did not notice any immediate same-day relief but he did notice some minor relief about three to five days post injection which lasted until his pain returned during the second week. (T. 45, 22) On August 12, 2024, Petitioner saw Dr. Brooks for follow-up and reported considerable improvement regarding his neck injury. (PX4 at 53)

Petitioner returned to Dr. Gornet on August 19, 2024, and reported the first injection at C7-T1 helped substantially for two to three weeks and the second injection also helped but Dr. Gornet did not document the duration of relief from the C6-C7 injection. (PX1 at 4) Dr. Gornet noted Petitioner's "pain is more left side of his neck, left trapezius, left shoulder, down his left arm into his triceps region but also crossing into his volar forearm and little finger." While the positive pain relieving responses to the two cervical injections provided consistent diagnostic evidence identifying the discs at C6-C7 and C7-T1 as potential pain generators, Dr. Gornet did not recommend separate injections for any of the other disc levels. He simply concluded, "My tentative

24 WC 12709

Page 4

thinking is while he does have a disc injury at C3-4, I would treat C4-5, C5-6, C6-7, and C7-T1. This would be a four-level cervical disc replacement.” (PX1 at 4)

On August 20, 2024, Petitioner saw his treating chiropractor, Dr. Brooks, and reported Dr. Gornet’s recommendation for cervical disc replacements. Dr. Brooks documented Petitioner’s self-reported pain levels as 3/10 on average which could increase to 5/10. (PX4 at 59) There was no documented upper extremity pain. On September 4, 2024, Dr. Brooks documented 4/10 pain level for the neck. (PX4 at 71) There was no documented upper extremity pain.

On September 12, 2024, Dr. Chabot performed an IME at Respondent’s request. (RX1, Dep. Ex#2) At the examination, Petitioner reported his neck complaints were much improved and described his symptoms at that time as more like an aching, sometimes stabbing pain. According to Dr. Chabot, Petitioner further complained of scapular pain but reported his radiating symptoms into the left upper extremity had almost completely resolved. (RX1, Dep. Ex#2 at 2) At trial, Petitioner disputed this history, explaining he completed a pain diagram omitting upper extremity symptoms only because he did not have upper extremity symptoms that day and the instructions on the pain diagram asked for symptoms felt that day. (T. 31-33) Petitioner testified he did mark the diagram for hand numbness and completed a questionnaire on which he endorsed radiating symptoms in his left arm. (T. 34-35) Petitioner further testified that he continued to have radiating upper extremity symptoms which he verbally reported to Dr. Chabot. Petitioner testified he had not been taking any prescribed medication other than daily over-the-counter Ibuprofen which was consistent with Dr. Chabot’s report.

On examination of the cervical spine, Dr. Chabot noted there was no tenderness to palpation and no spasm. (RX1, Dep Ex#2 at 12) Dr. Chabot noted Petitioner demonstrated forward flexion to 75 degrees with some complaints of left posterior cervical spine ache. Petitioner performed side-rotation to 75 degrees bilaterally and had mild ache with full rotation to the left. Neurologically, the Spurling’s test was negative and Petitioner was found with symmetrical deep tendon reflexes, 5/5 motor strength, and sensation was intact. Dr. Chabot reviewed the cervical spine x-rays obtained on June 25, 2024, and noted evidence of “slightly diminished” disc space height at C4-C5, C5-C6, C6-C7 and C7-T1. (RX1, Dep Ex#2 at 13) Neural foramina narrowing was noted bilaterally from C4 to T1 associated with uncovertebral joint hypertrophy. Dr. Chabot also reviewed the MRI study performed on May 10, 2024. Dr. Chabot noted evidence of multilevel disc desiccation. At the C4-C5 level there was evidence of advanced right foraminal narrowing associated with disc spur complex. Dr. Chabot noted that C5-C6 had evidence of disc spur complexes resulting in bilateral foraminal stenosis. C6-7 had evidence of a left-sided neural foraminal disc protrusion with left foraminal stenosis. There was also evidence of right foraminal narrowing associated with disc spur complexes. At C7-T1, Dr. Chabot noted severe left foraminal stenosis associated with disc spur complexes. (RX1, Dep Ex#2 at 13)

It was Dr. Chabot’s impression that Petitioner suffered neck and back strains with chronic multilevel degeneration of the cervical and lumbar spine. (RX1, Dep Ex#2 at 13) Dr. Chabot noted there was “questionable” indication for “prior cervical radiculopathy.” Dr. Chabot opined that the

neck and back strains were causally related to the work injuries. Dr. Chabot found it notable that the physical therapist, Corey Voss, consistently reported there was no evidence of neurologic changes involving the upper or lower extremities. (RX1, Dep Ex#2 at 13) Dr. Chabot commented that Corey Voss's therapy records indicated Petitioner primarily had evidence of soft tissue changes and restricted motion, which by Petitioner's own account had improved. Dr. Chabot further noted Petitioner had reported the prior injections did not offer any substantial improvement in his complaints. Dr. Chabot further commented that his physical examination findings lacked any evidence of persisting functional deficits that would preclude Petitioner from returning to some form of employment. Dr. Chabot found the treatment and therapy provided to date was reasonable and necessary; however, it was his recommendation that Petitioner return to work with a 50-pound lifting limit and undergo an FCE to further assess his physical capabilities. Dr. Chabot opined there was no need for further therapy or treatment.

On September 19, 2024, Petitioner returned to Dr. Brooks with a documented 3/10 to 4/10 pain level. (PX4 at 85) There were no documented upper extremity symptoms at this visit; however, Petitioner again saw Dr. Brooks on October 15, 2024, and reported he began experiencing an increase in left upper extremity symptoms after discontinuing conservative treatment two and a half weeks earlier. (PX4 at 93) Dr. Brooks ordered resumption of physical therapy. (PX4 at 94)

Dr. Gornet next re-evaluated Petitioner on October 17, 2024. (PX1 at 5) Dr. Gornet noted Petitioner complained of neck pain located more to the left side with pain in the left trapezius, left shoulder, and pain going down the left arm, particularly along the triceps. (PX1) It was Dr. Gornet's assessment that Petitioner had a multi-level problem in his cervical spine, primarily on the left side at C5-C6, C6-C7, C4-5, and "even C3-4." Dr. Gornet then stated, "He really has a five-level problem. I would probably hold on treatment at C3-4 and just treat C4-5, C5-6, C6-7, and C7-T1." Dr. Gornet commented, "I believe C3-4 is injured but it may be sufficient enough to stand on its own and not be treated." Dr. Gornet felt the best option to cure and relieve the effects of Petitioner's cervical injury was a four-level cervical disc replacement. Dr. Gornet did not explain why he believed all four disc levels were pain generators. No diagnostic injections had been ordered for the other disc levels at C4-C5 and C5-C6. No EMG/nerve conduction test had been ordered to validate specific nerve roots correlating with the radicular complaints.

Dr. Gornet testified via deposition on December 16, 2024. Dr. Gornet confirmed it was his opinion that Petitioner sustained an aggravation of preexisting cervical spine condition with acute disc injury at C6-C7 and C7-T1. (PX3 at 9) In support of his recommended four-level disc replacement surgery, Dr. Gornet noted the MRI of the cervical spine showed multi-level disc pathology with foraminal narrowing and testified that treating "only a part of this will not be sufficient based on our understanding of these problems and treating other patients with like or similar injuries." (PX3 at 12-13) Dr. Gornet further testified, "[w]e published in this area" and "we've written a paper regarding cervical disc replacement and work-related injuries, which is considered a very high profile paper in a high profile journal, and it clearly spells out that *you have to treat all of the pathology* present to get the patient back to work." (Emphasis added.) (PX3 at

13) Dr. Gornet did not elaborate and he did not distinguish between symptomatic pathology and asymptomatic pathology. Dr. Gornet did not identify the journal and he did not say whether or not his published paper was peer-reviewed. Dr. Gornet did not mention the existence of any other medical studies by other physicians. For additional support, Dr. Gornet testified a four-level disc replacement would help get Petitioner back to full duty work, though he qualified that statement by noting he was speaking only of the cervical spine. (PX3 at 13) Treatment of the lumbar spine was deferred pending completion of the cervical spine treatment. Regarding his exam findings for the cervical spine, Dr. Gornet testified to the following:

His physical complaints were consistent with the pathology identified. *His exam for the most part was nonfocal, so there wasn't a correlation there.* But for the most part I did feel that the structural pathology seen on MRI fit with his subjective complaints. (Emphasis added.) (PX3 at 9)

On cross-examination, Dr. Gornet testified Petitioner's cervical condition included components of radiculopathy and axial neck pain, with the radiculopathy originating from C6-C7 and C7-T1 and "maybe also a little at C5-C6." (PX3 at 21). Dr. Gornet testified that the decision-making for surgery is generally based on the patient's symptoms and concern for neurological compromise that could become irreversible if not addressed. (PX3 at 21) Regarding Petitioner, however, Dr. Gornet testified the concern for neurological compromise is "less of an issue because for the most part his strength has been maintained, and so we're not as worried about loss of strength or spinal cord integrity." (PX3 at 21) Dr. Gornet further testified the components of a nerve include sensation and pain, and if a patient has chronic pain, then the patient is not doing well even though they have normal strength. (PX3 at 22) Dr. Gornet thus concluded, "So we have to take care of and factor in all of those but I'm not so worried about compromised neurologically on this patient." Dr. Gornet disagreed with the notion that Petitioner's pain complaints cannot be correlated with all four disc levels. (PX3 at 22-23) Dr. Gornet then testified that Petitioner's radicular pain was emanating from three disc levels at C5-C6, C6-C7, and C7-T1 (PX3 at 23) This was a modification compared to Dr. Gornet's testimony on direct examination that Petitioner had radiculopathy emanating from two disc levels and "maybe also a little at C5-C6." (PX3 at 21) Dr. Gornet further testified Petitioner also had axial neck pain at C4-C5. (PX3 at 23) Dr. Gornet commented that if Petitioner did not have axial neck pain then he would not operate on C4-C5. Dr. Gornet also opined that Petitioner had axial neck pain at the four disc levels, C4-5, C5-C6, C6-C7, C7-T1. (PX3 at 24) Asked if he agrees Petitioner has no functional deficits, Dr. Gornet replied, "I don't think he has a strength deficit. Even when I first saw him, just a little touch of weakness but nothing overly bad. For the most part he was 5/5." (PX3 at 24)

Dr. Gornet further testified that operating on all four levels would be preferable for two reasons. First, there would be a chance a two-level disc replacement might not be successful for getting the Petitioner back to full duty work, and second, if only two levels are addressed with disc replacements then any future procedure which may be needed to address the other levels could create increased risks of complications since the future operative zone would be about a centimeter away from the adjacent implanted disc device. (PX3 at 28) This explanation, of course,

presupposes there is pain-generating pathology with the other two discs, as Dr. Gornet has opined that Petitioner's pain complaints correlate with all four disc levels. Since Dr. Gornet has never ordered diagnostic injections for the other two levels, and has not obtained EMG/nerve conduction testing to validate the origins of the radiculopathy, there is a significant concern that Dr. Gornet's recommended four-level disc replacement may replace discs which are asymptomatic and which may never become symptomatic.

Following his deposition, Dr. Gornet re-evaluated Petitioner on January 6, 2025. (PX1 at 6) Petitioner continued to complain of pain at the base of the neck with pain extending to the left trapezius, shoulder, and down the upper arm. Petitioner also complained of some tingling. Dr. Gornet noted Petitioner continued to exhibit 5/5 motor strength. No neurological deficits were documented. Dr. Gornet noted Petitioner was continuing to work light duty, which was necessitating ongoing physical therapy. Dr. Gornet commented, "Dr. Chabot had felt that he should work light duty, and I have no problem with this." Dr. Gornet further indicated the light duty "times out" in April. Dr. Gornet continued to recommend the four-level disc replacement.

Dr. Chabot testified via deposition on February 21, 2025. (RX1) Dr. Chabot is a board certified orthopedic surgeon with a subspecialty in spine surgery. Dr. Chabot testified he has been practicing spine surgery for 30 years and estimated cervical spine cases make up about 40% of his surgical practice and the lumbar spine cases make up about 60% of his surgical practice. Dr. Chabot testified he performs decompressions, fusions, and artificial disc replacements. (RX1 at 6) Parenthetically, Dr. Gornet challenged Dr. Chabot's expertise, testifying that Dr. Chabot was commenting on a surgery he's never done, adding "I know that for a fact." (PX3 at 36) Dr. Gornet's belief is contradicted, however, by Dr. Chabot's testimony and there is nothing in the record before us to endorse Dr. Gornet's belief that Dr. Chabot has never performed an artificial disc replacement.

Dr. Chabot testified Petitioner described his neck pain as an aching pain, sometimes a stabbing pain, which had improved since the work injuries. (RX1 at 9) Dr. Chabot testified that Petitioner reported his left upper extremity complaints had almost completely resolved, with his radiating pain localized in the scapular region. (RX1 at 9-10) As mentioned above, Petitioner denied his upper extremity symptoms had resolved. Per Dr. Chabot, Petitioner also reported he was not taking prescription medications, which was consistent with Petitioner's testimony. (RX1 at 10-11) Dr. Chabot testified Petitioner had a negative response with Spurling's test. Dr. Chabot further testified Petitioner exhibited 5/5 motor strength in the upper extremities and normal reflexes. Dr. Chabot further noted a negative Hoffman's sign which is a test for cord compression. (RX1 at 11-12) Dr. Chabot testified Petitioner had a relatively normal neurological examination. (RX1 at 12) Regarding the negative Spurling's test, Dr. Chabot explained the test is a neurocompressive test designed to reproduce symptoms associated with neural compression due to disc herniation or stenosis, and in this case Petitioner had no reproducible upper extremity symptoms in response to the test. (RX1 at 12) Dr. Chabot testified Petitioner was able to move about the room without difficulty. (RX1 at 11) Acknowledging the neurological deficits noted by Dr. Gornet two months prior, Dr. Chabot testified that his exam findings were in line with the

24 WC 12709

Page 8

exam findings of the physical therapist, Corey Voss, whose therapy records showed no neurological deficits over the course of many months in therapy. (RX1 at 13)

Regarding Petitioner's left upper extremity pain, Dr. Chabot testified he diagnosed that aspect of the Petitioner's cervical condition as "questionable prior cervical radiculopathy" because at no point in time did Corey Voss note evidence of neural deficits in the extremity to confirm the presence of an active radiculopathy. (RX1 at 19-20) Additionally, Dr. Chabot did not detect an active radiculopathy during his examination. (RX1 at 20) Dr. Chabot testified there was no evidence of neurologic changes or sensory changes or reflex changes, and the Spurling's test was negative. Dr. Chabot credibly opined that Petitioner's cervical spine did not require further intervention. He testified Petitioner was "a 57-year-old who used over-the-counter ibuprofen twice a day, and his physical examination lacked any evidence of functional deficits." (RX1 at 21) Dr. Chabot testified it was his opinion that Petitioner was not a candidate for multi-level cervical spine surgery and did not require additional treatment. (RX1 at 21) Dr. Chabot noted Petitioner appeared to be managing his symptoms quite well with over-the-counter medications. (RX1 at 23)

Dr. Chabot further testified he viewed surveillance video after the IME and authored a second report regarding his findings. (RX1 at 23) Dr. Chabot testified the video showed Petitioner mowing the lawn, using a weed eater, and performing yard work without any evidence of functional deficits. (RX1 at 23-24) Dr. Chabot testified the surveillance video supported his opinions. (RX1 at 23-24)

Regarding Dr. Gornet's recommended surgery, Dr. Chabot testified Petitioner has no significant functional deficits, no neural deficits, and Dr. Gornet is recommending a four-level cervical disc replacement which has the potential for pretty significant complications. (RX1 at 24) Dr. Chabot opined that the risks of the surgical procedure far outweigh the patient's need. Dr. Chabot further described the potential complications with cervical disc replacement. (RX1 at 25) Some complications are of a more general nature, similar to the complications seen with cervical fusions, and include infection, bleeding, death, dysphasia, which is difficulty swallowing, and dysphonia, which is disruption of the vocal cord function. Patients can also develop Horner's syndrome, which is damage to the sympathetic trunk resulting in varying neurologic abnormalities involving the facial features and muscles of the face. Dr. Chabot testified there are also potential complications specific to disc replacement, including subsidence (settling or sinkage of the implant into the vertebral bone), implant failure, and implant wear. Patients can also develop heterotopic bone formation; bone that forms along the anterior portion of the disc replacement implants as a response to the surgical procedure, as well as formation of bony spurs which can develop into a fusion at that level. Dr. Chabot testified that a four-level procedure presents a much higher risk for all of these potential complications. (RX1 at 25-26) Dr. Chabot further testified that operating at the C7-T1 level is challenging and very difficult due to the structural angulation involving the T1 vertebra. (RX1 at 26) Dr. Chabot agreed Petitioner may have significant axial neck pain given the extent of the degenerative changes seen in the imaging; however, Dr. Gornet's recommendation to operate at four disc levels, which Dr. Chabot characterized as a "napalm technique where you do every single level that has degeneration," suggests he does not really know

24 WC 12709

Page 9

where the problem is located and “operating at multiple levels for that reason is not what most surgeons do.” (RX1 at 28-29)

On cross-examination, Dr. Chabot clarified his prior testimony regarding the absence of neurological deficits in the therapy records. Dr. Chabot agreed Corey Voss frequently documented a positive cervical compression test; however, Dr. Chabot noted there were no documented findings for numbness, weakness, or reflex changes by Mr. Voss, and assuming Mr. Voss was referring to the Spurling’s test, there must be radicular complaints and neurological changes present in order to have a valid positive finding with a Spurling’s test. (RX1 at 32-34) Dr. Chabot explained the Spurling’s test is a widely accepted neurocompression test and a patient must first have radicular complaints and neurological changes before making a positive Spurling’s test because the Spurling’s test is designed to exacerbate or reproduce those complaints. Performing a Spurling’s test is meaningless if a patient has no radicular complaints and neurological changes. Dr. Chabot further testified we do not know what Mr. Voss meant by positive compression test given the absence of radicular signs. (RX1 at 34-35) Likewise, Dr. Chabot explained that Mr. Voss’s documented positive cervical distraction findings are not indicative of radiculopathy because it’s a non-specific test which can yield relief of symptoms even if the condition is soft-tissue related since the distraction test involves a traction or decompression maneuver which reduces tension in the muscles. (RX1 at 36)

Petitioner testified that the axial neck pain affecting his neck has improved since the work injuries. (T. 26) That said, Petitioner testified he continues to have episodic pain at the base of his neck on a daily basis “at some point or another” with varying intensity. (T. 26) Regarding his radiating pain, Petitioner testified those symptoms have improved in their intensity but those symptoms continue to ebb and flow and their timing is always different. (T. 27) Petitioner also stated the radiating symptoms occur daily. On cross-examination, Petitioner agreed his symptoms had improved since the injury but testified he plateaued and has not had any further improvement. (T. 43) Petitioner testified he medicates with Ibuprofen twice daily and does not take any narcotic pain medications except hydrocodone “every once in a while” when his pain is severe. (T. 49) Petitioner did not recall Dr. Gornet ever recommending EMG/nerve conduction testing. (T. 49) Petitioner further testified about retirement and stated his goal is to retire when he reaches age 62. (T. 64) As Petitioner’s date of birth was May 12, 1967, Petitioner is planning to retire in May 2029. Thus, the proposed four-level disc replacement is purportedly intended to help Petitioner return to full duty work in a position for which he is contemplating retirement in about three years.

Petitioner testified he was given a choice by Dr. Gornet, either have the recommended four-level surgery or live with his condition under permanent restrictions. (T. 25) Petitioner testified he had received treatment at MultiCare Specialists for the past eleven months which included activity modification which has failed to resolve his condition. Petitioner testified he desires to undergo the recommended surgery as he feels the surgery offers his only hope for regaining his prior quality of life. (T. 25-26) Left unsaid was whether Dr. Gornet ever offered Petitioner the choice of a two-level disc replacement, and deferring intervention at the other two levels for future consideration if needed. It is also unknown if Dr. Gornet ever apprised Petitioner regarding the

off-label use of the artificial disc device since the Food and Drug Administration (FDA) has only approved use of the device for one level or two contiguous levels.

Pursuant to Rule 201 of the Illinois Rules of Evidence, judicial notice of facts may be taken when the facts are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). Judicial notice may be taken whether requested by a party or not, and judicial notice may be taken at any stage of the proceeding. Ill. R. Evid. 201(c), 201 (f) (eff. Jan. 1, 2011). This Commission has considered the scope of FDA approval in prior cases and it is appropriate to take judicial notice of information available on government websites including the FDA. See *In re Marriage of Jones*, 2023 IL App (1st) 221369-U, where the Court held judicial notice taken by the trial court of information from the FDA and CDC was proper in a dispute over a petition for vaccination of the minor child against Covid-19. As noted in that decision, “This court has previously held that information on government websites is sufficiently reliable such that the court may take judicial notice of the information. (citation omitted.) Here, the trial court took judicial notice of the CDC recommendations, the IDPH document, and the FDA news release, all of which are from official government websites.” *Id.* at P 51. See also *People vs. Runyon*, 2023 IL App (4th) 230058-U, where the Court expressed the following:

We take judicial notice that Zoloft is the brand name for sertraline, so defendant was continuing to take one of the medications he had been previously prescribed. *Sertraline (Marketed as Zoloft) Information*, U.S. Food & Drug Administration, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/sertraline-marketed-zoloft-information> (last visited Oct. 25, 2023). *We may take judicial notice on appeal* of facts that are generally known or readily verifiable from sources of indisputable accuracy, such as the Food and Drug Administration. (Emphasis added.) *Id.* at P46.

Given the importance of the issue before us, I take judicial notice of FDA approval for medical devices, which can be obtained from the agency’s online database (“Devices@FDA”), found at <https://www.accessdata.fda.gov/scripts/cdrh/devicesatfda/index.cfm>. Using the search terms “cervical disc prosthesis” reveals the following.

On July 16, 2007, the FDA approved the Prestige Cervical Disc system for single-level use between C3 and C7. On December 17, 2007, the FDA approved the ProDisc TM-C total disc replacement device for single-level use between C3 and C7. On August 7, 2013, the FDA approved the Mobi-C cervical disc prosthesis for single-level use between C3 and C7. On August 23, 2013, the FDA approved the Mobi-C cervical disc prosthesis for two-level use at two contiguous levels from C3 to C7. On July 24, 2014, the FDA approved Prestige LP cervical disc for single-level use between C3 and C7. (This device was under a temporary recall from March 2018 through November 2, 2020 due to reported complaints of drill bits breaking during procedures, with subsequent investigation showing the interaction between drill guide and drill bit could lead to drill bit breakage. This issue was resolved by the device manufacturer.) On February

6, 2019, the FDA approved the M6-C Artificial Cervical Disc for single-level use between C3 and C7. And on March 25, 2020, the FDA approved the Simplify® Cervical Artificial Disc for single-level use between C3 and C7. There are a few other devices approved for the market; however, it is clear the FDA has not approved artificial disc devices for use in the cervical spine beyond two contiguous levels. It is also noteworthy that all of the above listed medical devices were approved only for C3 through C7. The FDA has not approved disc replacement for the C7-T1 level, which is one of the levels Dr. Gornet is recommending for replacement.

The lack of FDA approval is not controlling; however, the lack of FDA approval is a valid factor to be considered. On several occasions, this Commission has previously denied medical benefits for non-FDA approved diagnostic testing and treatment services. In *Salley vs. State of Illinois, Choate Mental Health*, 21 IWCC 269, 2021 Ill. Wrk. Comp. LEXIS 249, the Commission denied medical expenses incurred for MRI spectroscopy ordered by Dr. Gornet. Dr. Gornet testified that MRI spectroscopy was being used in FDA clinical trials in which he was involved; however, the Commission noted that the fact that the FDA *might approve* the procedure in the future does not establish that the procedure is generally accepted, reasonable or necessary in the present. In *Bauer vs. State of Illinois, Chester Mental Health Ctr.*, 22 IWCC 391, 2022 Ill. Wrk. Comp. LEXIS 381, the Commission again considered Dr. Gornet's recommended use of MR Spectroscopy and affirmed the arbitrator's denial of prospective medical benefits for the test. This time, Dr. Gornet testified the MR Spectroscopy had been approved by the FDA to diagnose back pain; however, the arbitrator noted the absence of any documentation corroborating FDA approval, and further noted that an internet search including the FDA's website did not show any such approval. The arbitrator also noted that the Appellate Court had recently affirmed the Commission's denial of MR Spectroscopy in *Lewis vs. Ill. Workers' Comp. Comm'n*, 2021 IL App (5th) 200302. In *Cordon vs. Healthcare Solutions*, 18 IWCC 22; 2018 Ill. Wrk. Comp. LEXIS 48, this Commission denied prospective medical benefits for a left knee cartilage restoration, consisting of a Carticel biopsy followed by Carticel implantation and anteromedialization of the tibial tubercle, which apparently had limited FDA approval for tibiofemoral lesions but not for surgery on the patella.

The Commission has also analyzed with caution treatment services considered to be experimental. See *Houston vs. K. Hovnanian Town & Country Management LLC*, 13 IWCC 116, 2013 Ill. Wrk. Comp. LEXIS 164 (prospective medical denied for recommended off-label experimental use of a cochlear implant to address persistent tinnitus where alternative recommendations had been made for a second opinion assessment and psychological evaluation). See also, *Cholewiak vs. XPO Logistics Freight, Inc.*, 20 IWCC 0380, 2020 Ill. Wrk. Comp. LEXIS 767 (denying medical expenses incurred for compound topical analgesics found to be experimental); and *Garrison vs. Cottage Care*, 10 IWCC 979, 2010 Ill. Wrk. Comp. LEXIS 1089 (denying medical expenses for experimental Phenol injections). Treatment considered experimental may still be found reasonable and necessary in appropriate settings. See e.g., *Fesi vs. Carol Stream Fire Protection District*, 13 IWCC 260, 2013 Ill. Wrk. Comp. LEXIS 292, where the treating physician recommended what he called a "sub-q spinal cord stimulator" which he developed by combining a dorsal column stimulator with a peripheral stimulator, and for which he

24 WC 12709

Page 12

was conducting a research study for Medtronic. The device was considered experimental and the employer's IME physician opined that the risks outweighed the benefits. On review, the Commission awarded the requested prospective medical treatment. A significant factor favoring the proposed treatment was the fact that an external trial stimulator would be used first to determine its success for the claimant before implanting a permanent device. The Commission therefore decided to award the trial stimulator, and if successful, then the employer was to authorize the permanent implant.

This Commission has also previously denied prospective medical benefits for a three-level and four-level cervical disc replacement on account of the lack of FDA approval. See *Burgdorf vs. State of Illinois, Chester Mental Health Center*, 25 IWCC 0280, 2025 Ill. Wrk. Comp. LEXIS 534 (denial of four-level disc replacement); *Helens vs. Global Brass*, 18 IWCC 460, 2018 Ill. Wrk. Comp. LEXIS 1184 (denial of three-level disc replacement), and *Lupardus vs. Menasha Corp.*, 2017 Ill. Wrk. Comp. LEXIS 130, 17 IWCC 9 (denial of three-level disc replacement).

Even setting aside the lack of FDA approval as a factor, there is a lack of objective medical findings to support a four-level cervical disc replacement. Dr. Gornet's medical records and testimony support diminished sensation for only two dermatomes and his remaining findings on examination were essentially within normal limits. During his deposition, Dr. Gornet testified that while Petitioner's complaints were consistent with the pathology identified in the MRI, Petitioner's "exam for the most part was nonfocal, so there wasn't a correlation there." (PX3 at 9) Dr. Gornet never ordered diagnostic injections for the other two disc levels and he never ordered EMG/nerve conduction testing.

Section 19(e) of the Act sets forth the following regarding decisions rendered by the Commission:

Decisions rendered by the Commission and dissents, if any, shall be published together by the Commission. The conclusions of law set out in such decisions shall be regarded as precedents by arbitrators for the purpose of *achieving a more uniform administration of this Act*. (Emphasis added) 820 ILCS 305/19(e).

Accordingly, I believe this Commission is obliged to have consistency in its decisions. Though every claim brought before the Commission must be decided on the facts and evidence presented on a case-by-case basis, issues presented to the Commission which share commonality, such as off-label medical procedures exceeding FDA approval, should be carefully and cautiously analyzed with a view towards achieving a consistent body of law to avoid the appearance of outcomes determined by chance. I acknowledge that three-level and four-level cervical disc replacement procedures have been awarded in other cases; however, in my view, the off-label use of these devices should not be authorized without credible objective medical evidence demonstrating that each of the discs recommended for replacement is an actual pain generator.

24 WC 12709

Page 13

In conclusion, I find there is no objective medical evidence validating all four disc levels are pain generators. Dr. Gornet ordered injections at two levels, C6-C7 and C7-T1, but he did not order injections for the other disc levels. Dr. Gornet did not order EMG/nerve conduction testing to help identify and correlate Petitioner's radiating symptoms with any specific nerve roots. Dr. Gornet has failed to justify replacement of four discs given the minimal neurological findings and the absence of functional deficits. His recommended surgery uses an artificial disc device which has not been approved by the FDA for use in more than two contiguous disc levels, and disc replacement, even for one-level, has not been approved for the C7-T1 level. Dr. Chabot described several potential complications with artificial disc replacement, the risks of which increase with the number of discs replaced. Dr. Gornet has not provided a persuasive medical rationale for replacing four cervical discs and his recommended four-level surgery is an all-of-the above approach to treat the symptoms without confirming the root cause or causes.

For all the above reasons, I respectfully dissent in part from the majority's affirmance of the arbitration award directing Respondent to provide and pay for the four-level cervical disc replacement recommended by Dr. Gornet.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

June 30, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012709
Case Name	Todd Holder v. City of Edwardsville
Consolidated Cases	24WC012716
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Andrew Keefe

DATE FILED: 5/27/2025

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 20 2025 4.14%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Todd Holder
 Employee/Petitioner

Case # **24** WC **012709**

v. Consolidated cases:

City of Edwardsville
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Bradley Gillespie, Arbitrator of the Commission, in the city of **Herrin**, on **4/2/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/4/24 & 5/5/24**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$124,924.28**; the average weekly wage was **\$2,402.39**.

On the date of accident, Petitioner was **56** 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 **\$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**CAUSATION:**

The Arbitrator finds Petitioner's current conditions of ill-being, 1) aggravation of pre-existing cervical pathology, as well as an acute disc injury C6-7 and C7-T1, and 2) aggravation of pre-existing lumbar condition, as well as an acute herniation at L2-3, are causally related to his work accidents of May 4, 2024 and May 5, 2024. This conclusion is supported by a chain of events analysis, the medical records, and the persuasive testimony of Dr. Gornet, Petitioner and Dr. Chabot.

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) Multicare Specialists: \$58,790.00, and 2) MFG Spine L.L.C: \$241.13. 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. Matthew Gornet.

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

MAY 27 2025

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TODD HOLDER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos.: 24WC012709 & 24WC012716
	)	
CITY OF EDWARDSVILLE,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

PROCEDURAL POSTURE

This claim came before an Arbitrator of the Illinois Workers' Compensation Commission in Herrin, Illinois, on April 2, 2025, pursuant to Petitioner's 19(b)/8(a) petition. On May 9, 2024, Todd Holder [hereinafter "Petitioner"], filed two Applications for Adjustment of Claims alleging injuries to his Low Back/Neck/MAW resulting from work injuries sustained on May 4, 2024, and May 5, 2024, while working for the City of Edwardsville [hereinafter "Respondent"]. (Arb. Ex. 2 & Arb. Ex. 4 *respectively*) Upon motion of Petitioner, the claims were consolidated. Respondent is disputing: 1) casual connection for treatment after the September 16, 2024, IME report; 2) reasonableness and necessity of medical treatment after the September 16, 2024, IME report; and 3) prospective medical treatment.

FINDING OF FACTTestimony of Petitioner

Petitioner is a firefighter paramedic with the City of Edwardsville and currently holds the rank of Lieutenant. (Tr. p. 15) He has been employed with the City of Edwardsville for 21 years. *Id.*

Petitioner testified he injured his neck and low back on May 4, 2024, and May 5, 2024. On the evening of May 4, 2024, Petitioner responded to a structured fire and was tasked with ventilating the windows on the first and second floor as well as the house's gabled vent. Petitioner was required to deploy a 24-foot extension ladder to ventilate the windows and open the gabled vent at the roof line to assist in ventilating the interior of the structure. (Tr. pp. 15-16) Due to the house having metal awnings over each window, Petitioner had to carry and reposition a 24-foot extension ladder numerous times to remove the awnings on the first and second story windows on both sides before removing the windows and removing the gable vent. (Tr. p. 16-17) After that, they performed general clean-up and mop up for a couple of hours. (Tr. p. 17) Upon returning to the fire station for additional clean-up, he noticed mild to moderate tightness in his left scapula and left trapezius muscles. *Id.* He self-medicated with Ibuprofen upon return to the firehouse. *Id.* While working the same 36-hour shift, on May 5, 2024, he was dispatched to assist an unresponsive patient. *Id.* While moving the patient from the bed onto the stretcher,

Petitioner was required to kneel on the mattress near the patient's right side and lift her head and upper torso. (Tr. pp. 17-18) Petitioner and coworker transferred the patient from the bed to the stretcher. (Tr. p. 18) Throughout that whole day he continued to have muscle soreness. (Tr. pp. 18-19) He once again self-medicated at the firehouse and went to bed. The following morning, he woke up to another emergency call. (Tr. p. 19) The following morning, when he got out of his bunk and went to stand up, he had severe pain and spasms in the left lumbar region as well as spasms in the left scapula radiating up to the left trapezius muscles and into the left side of the base of his neck. *Id.* After returning to the firehouse from that morning's emergency call, he reported his injuries to his supervisor. *Id.* As the day progressed his symptoms continued to worsen. *Id.*

When asked to describe his initial neck symptoms, Petitioner stated:

“... as the days progressed, the symptoms began to develop. It continued with the spasms in the left scapula, the left trapezius, and again, bilaterally now on left and right side of the neck, muscle pain, aching, tightening, the spasms. The base of the neck began to develop a burning, tingling type shooting type pain off on the left side of the lower base of the neck. That radiated down through the left trapezius. And then again, as the days went on after that, I started noticing a burning, kind of a searing, tingling sensation down the posterior triceps and then continuing down into the left palmer region, numbness, tingle, pins and needles, yeah, and that went on for probably -- until starting in mid-June, late June before I started seeing any relief of those symptoms.” (Tr. pp. 20-21)

Petitioner described his low back symptoms as: “Low back, tightening, cramping, burning, spasms predominantly left side. A lot of the muscle pain and aches and burning are bilaterally. The spasms have been predominantly on the left side. There has been occasional burning and kind of tingling sensations down the left buttock region.” (Tr. p. 21) If he sits or stands for too long, he will occasionally have numbness and tingling in one or both of his feet. (Tr. pp. 21-22)

Petitioner testified he first sought medical treatment at Multicare Specialist on May 7, 2024. (Tr. p. 22) MRI's of the lumbar and cervical spine were ordered. *Id.* After the MRI's were completed, he was referred to Dr. Matthew Gornet. (Tr. pp. 22-23) Dr. Gornet ordered continued conservative care with Multicare Specialist and referred Petitioner to Dr. Helen Blake for pain management. (Tr. p. 23) Dr. Blake performed two cervical injections and one lumbar injection. *Id.* Petitioner reported some temporary relief from the injections, but no combination of conservative care completely resolved his symptoms. (Tr. pp. 23-24)

After completing conservative treatment, Dr. Gornet recommended a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. (Tr. p. 24) Petitioner testified he wishes to proceed with the recommended surgery because no treatment to date has been able to resolve his symptoms, and he would like to get back to his pre-injury quality of life. (Tr. pp. 24-25)

Petitioner testified his axial neck pain has improved since the initial injuries. (Tr. p. 26) However, it has never completely gone away. *Id.* He experiences neck and nerve pain daily. (Tr. pp. 26-27) Petitioner testified the radiating pain from his neck has improved in its intensity since the work injuries, however, he continues to have symptoms daily. (Tr. p. 27)

Petitioner testified Respondent's Deposition Exhibit 3, page 5 of Respondent's Exhibit 1, shows a pain diagram that accurately reflects his symptoms in the days and weeks following his initial injury. (Tr. p. 30) Petitioner testified Respondent's Deposition Exhibit 3, page 6 of Respondent's Exhibit 1 reflects that, at the time of the IME appointment, he had an aching and burning sensation at the base of the neck, which radiated laterally to the left trapezius muscle and left scapula. (Tr. p. 31) He did not indicate he was experiencing symptoms in his bicep, triceps, or forearms. *Id.* He did indicate he had numbness and tingling in the left-hand palmar region. (Tr. pp. 31-32) Petitioner testified that he continues to have symptoms in his triceps and forearms, however, he did not indicate those symptoms on the pain diagram contained in Respondent's Deposition Exhibit 3, page 6 of Respondent's Exhibit 1, because the instructions stated to only list symptoms he was having "right now". (Tr. p. 32) At the time he was filling out the pain diagram he did not have symptoms in his triceps or forearms. (Tr. pp. 31-33) Petitioner testified he told Dr. Chabot several times that he continued to have intermittent symptoms in his left arm and triceps. (Tr. pp. 33-34). Petitioner testified he told Dr. Chabot he was experiencing numbness and tingling in his left hand at the time of the IME office visit. (Tr. p. 34)

Petitioner testified Respondent's Exhibit 1, Deposition Exhibit 3, page 1, is a pain questionnaire he completed at the IME appointment, which described his symptoms overall since his work injuries. (Tr. pp. 34-35) It documented Petitioner had pain radiating into his legs and arms. His pain initially after the injury was severe. (Tr. pp. 35-36) His pain level was moderate at the time of the IME examination. (Tr. p. 36) The pain was described as sharp, aching, cramping, burning, and electric/shocking. *Id.* Petitioner testified he continues to experience these symptoms, and his pain level remained moderate. (Tr. pp. 36-37) The form also indicated he was having aching, burning and electric/shocking symptoms into his arms and legs, with numbness in the left arm and left leg. (Tr. p. 37) He was not experiencing weakness in his arms or legs. (Tr. pp. 34-38) Once again Petitioner reiterated that he continues to have symptoms in his neck and low back as well as pain radiating to his upper and lower extremities that have not resolved since his work injuries. (Tr. p. 37-38)

Petitioner testified that the continued treatment at Multicare Specialists has helped make his symptoms manageable. (Tr. pp. 38-39) Petitioner explained that when he stopped going to Multicare Specialists, after the September 16, 2024, IME appointment, his symptoms were "definitely exacerbated" both in intensity and frequency. (Tr. p. 39) Since restarting treatment at Multicare Specialists, Petitioner's symptoms have been more manageable. (Tr. p. 40)

On cross-examination, Petitioner testified he reviewed Dr. Chabot's IME report. He was disappointed by the report because Dr. Chabot documented that Petitioner's nerve/radiating pain had resolved. (Tr. p. 56) Petitioner testified: "I never once stated that to Dr. Chabot." *Id.*

Jonathan Brooks, DC Medical Records

Petitioner first sought medical treatment at Multicare Specialists, on May 7, 2024. (PX 4 p. 1) His chief complaints were neck pain and low back pain. The history of present illness on that date stated:

The patient is a 56-year-old male who reports to the office today for injury sustained as a firefighter/paramedic in Edwardsville, Illinois. The patient states that on Saturday night, May 4th he was at a structure fire. He was in his full gear and pack. He was putting a 24 foot extension ladder onto a structure. He had to lift and reposition the ladder multiple times due to structure issues on the building. When doing so he felt tightness in the left side of his neck that radiated to his left trap and medial scapular border. He continued to work, however he noticed an increase in tightness. As the day went on and even the next morning he had to take ibuprofen due to soreness and tightness in the left side of his neck. The next day he was working on Sunday, May 5th. There was an unresponsive female. He and two other people were moving her from the bed to the stretcher. He was kneeling on the bed and bending forward in order to get under her head and torso. He then moved her to the cot/stretchers. He felt an increase in soreness again in the left side of his neck that was significantly worse than the night before as well as the pain in the lower left side of the lumbar spine. The pain got worse throughout the day. The pain currently starts at the left side of the neck and radiates to the left shoulder and left arm. He has a burning sensation into the left triceps. His pain in his lumbar spine radiates from the left side of his low back into the left buttock. Currently he rates his pain is 6 out of 10 on the pain scale and his low back pain is 5 out of 10 on the pain scale. (PX 4 p. 1)

Physical examination of the cervical spine revealed reduction in left lateral flexion and left rotation causing increased symptoms to his left triceps area. Cervical compression test was noted to be positive. Cervical distraction was also positive. A slight loss of sensation in the left triceps compared to the right was observed. Mild weakness in the upper left extremity compared to the right was noted. Petitioner's lumbar spine examination revealed a reduced range of motion in flexion and lateral left flexion secondary to lumbar pain. Petitioner had palpable tenderness to the left lumbar spine. His straight leg raise was positive on the left but negative on the right. The diagnosis at that time was cervical disc protrusion, left cervical radiculitis, lumbar disc protrusion, left lumbar radiculitis. (PX 4 p. 2) Dr. Brooks initiated physical therapy. MRI's of the lumbar and cervical spines were ordered. Petitioner was held off work and told to avoid activities that exacerbated his pain. (PX 4 p. 2)

Dr. Gornet Medical Records

Petitioner first saw Dr. Matthew Gornet on June 25, 2024. His chief complaint was neck and low back pain. His neck pain was at the base, predominantly to the left trapezius, left shoulder, left scapula, into the upper arm, and then tingling down into his arm to his ring finger.

His low back pain central to both sides, left greater than right, intermittent tingling to both legs. (PX 1 p. 1) Regarding his work injuries, Dr. Gornet records state:

... his current problem began on or about May 4, 2024. He is a firefighter for the City of Edwardsville. He was moving a large ladder, approximately 24-foot extension ladder, for a house fire. He moved it several times. When he came back to the firehouse, he noticed increased pain in the left trapezius and left shoulder... the next day, he responded to an unresponsive patient. The patient was on the floor and he and several coworkers kneeled and lifted them and rotated to move them to a cot. He developed low back pain as well as left leg symptoms. He went back to the Firehouse and again that night he woke up and had severe pain to the point he could not move. This was particularly in his neck, left shoulder, as well as his low back. This was reported He has essentially been off work since.” (PX 1 p. 1)

Petitioner had treated for five weeks with Dr. Brook but had plateaued. Petitioner’s symptoms were consistent in the neck and low back. His neck was aggravated with reaching, pulling, or lifting. His low back was aggravated with prolonged sitting, bending, or lifting. He had left arm tingling and paresthesia. He had only occasional parathesis in the legs. (PX 1 p. 1)

Petitioner’s physical examination revealed pain in his neck to both sides, to the base, predominantly to the left trapezius, left shoulder, left scapula, into his posterior triceps region, and then tingling down the back of his arm into his forearm and hand. Sensation was decreased at the C7 and C8 dermatomes on the left. X-rays of the cervical spine revealed disc height loss at C5-6 and C6-7. (PX 1 p. 2) X-rays of the lumbar spine reveal air in the disc at L5-S1 and L4-5 with loss of disc height at L3-4, L4-5, and L5-S1. He was stable in flexion and extension. (PX1 at 3)

Dr. Gornet interpretation of the May 10, 2024, lumbar MRI was: “Some loss of disc height and foraminal narrowing at L5-S1 and to a lesser extent at L4-5 and L3-4. On the left side, there appears to be some more acute herniation at L2-3 best seen on image 13 of 23. There is also some mild foraminal narrowing at L5-S1 left.” (PX 1 pp. 3, 9-10)

Dr. Gornet interpretation of the May 10, 2024, cervical MRI was: “proton density views and sagittals reveal structural disc pathology at multiple levels but on the right side particularly at C4-5, C5-6, and C6-7, on the left side what appears to be C4-5, C5-6, C6-7 with a foraminal herniation extruded fragment at C7-T1 left. This is best seen on proton density and T2 foraminal views image 4 of 15 and 5 of 15, and even 6 of 15 also with a component of C6-7.” (PX 1 p. 3, 7-8)

Regarding the cervical spine Dr. Gornet’s working diagnosis was an “aggravation of this pre-existing condition as well as acute disc injury at C6-T1, C6-7.” (PX 1 p. 3) Regarding the lumbar spine, Dr. Gornet felt Petitioner sustained a disc injury at L2-3 and an aggravation of pre-existing disc degeneration particularly at L4-5 and L5-S1. *Id.* Petitioner was referred to Dr. Helen Blake for steroid injections on the left at C6-7, C7 -T1, and left L2-3. Additionally,

Petitioner was given a prescription to complete up to three months of treatment at Multicare Specialists. Petitioner was held off work. *Id.*

Regarding causation, Dr. Gornet stated: “Based on the information I have and from the Multicare Specialists, I do believe his current symptoms, at least in their level of severity, relate to the injury occurring around 5/4/2024.” (PX 1 p. 3)

On August 19, 2024, Petitioner returned to Dr. Gornet's office. He had undergone injections at C7-T1, C6-7, and L2-3. He reported his neck injections had helped substantially, particularly the first injection (at C7-T1). However, his pain had returned. Petitioner continued to have left sided neck symptoms which was affecting his left shoulder and arm all the way to his fingers. Dr. Gornet recommended Petitioner undergo a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. Dr. Gornet noted he would not comment on the lumbar spine, which has a multilevel problem, until “he has crossed over and doing well with his neck” (PX 1 p. 4)

Petitioner saw Dr. Gornet on October 17, 2024. His complaints and physical examination were unchanged. Dr. Gornet continued to recommend a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. At this visit, Dr. Gornet reviewed Dr. Micheal Chabot's September 12, 2024, IME report. (PX 1 p. 5)

Before trial, Petitioner last saw Dr. Gornet on January 6, 2025. His physical examination and complaints remained unchanged. Dr. Gornet continued to recommend the four-level disc replacement. Petitioner returned to light duty, per the IME. Physical therapy was continued to help ameliorate Petitioner's symptoms. (PX 1 p. 6)

Dr. Helen Blake Medical Records

Petitioner underwent a Left C7-T1 ILESI with fluoroscopy on July 9, 2024. The pre and post operative diagnosis was left cervical radiculopathy. (PX 2 p.2) Petitioner underwent a left C6-C7 ILESI with fluoroscopy on July 23, 2024. The pre and post operative diagnosis was left cervical radiculopathy. (PX 2 p. 15) He underwent an L2-3 ILESI with fluoroscopy on August 6, 2024. (PX 2 p. 28)

Deposition of Dr. Matthew Gornet

Dr. Matthew Gornet testified via deposition on December 16, 2024. Regarding Petitioner's medical treatment. (PX 3 p. 9) Dr. Gornet testified consistent with his medical records. Dr. Gornet diagnosed Petitioner with an aggravation of pre-existing cervical pathology, as well as an acute disc injury at C6-7 and C7-T1. *Id.* Regarding the lumbar spine, Dr. Gornet diagnosed Petitioner with an aggravation of his pre-existing condition, as well as an acute herniation at L2-3. *Id.*

Dr. Gornet testified his treatment plan is to address Petitioner's cervical spine first and put the lumbar treatment on hold. Specifically, Dr. Gornet stated: “Right now we placed his low back on hold. To me his low back can be more tolerable with injections. The best option for him would be conservative care. If he needs more than that, he would be looking at a combination of fusion/disc replacement in the lumbar spine.” (PX 3 pp. 10-11)

Dr. Gornet testified it is reasonable and necessary to perform a four-level disc replacement, at C4-5, C5-6, C6-7, and C7-T1, to cure and relieve the effects of Petitioner's work-related injury. (PX 3 p. 12) Dr. Gornet testified this surgery was reasonably calculated to return Petitioner to full duty work, at least when taking the cervical spine by itself. (PX 3 p. 25)

Dr. Gornet testified Petitioner should restrict his physical activities to manage his symptoms. The restrictions would help keep Petitioner from needing pre-op narcotics due to increased pain. (PX 3 p. 15)

Dr. Gornet testified Petitioner's "work activity as described aggravated his underlying degenerative condition in both his cervical and lumbar [spine]. [Dr. Gornet also] believe[s] it caused acute disc injury at C6-7 and C7-T1 in his cervical spine and acute disc injury at L2-3 in his lumbar spine." (PX 3 p. 17) Dr. Gornet testified the work activities performed by Petitioner on May 4th and 5th are the "type of mechanism of twisting and lifting a ladder that could easily injure a cervical spine. It has a long sort of lever arm which cause[s] you to use a lot of force in your arms. And finally, obviously bending over, lifting an individual on the floor could easily aggravate or cause an injury to the low back." (PX 3 p. 18)

Dr. Gornet testified that the cervical surgery was intended to address radicular symptoms as well as axial neck pain. (PX 3 at 21)

On cross-examination, Dr. Gornet was asked:

Question: "You would agree with me, Sir, that one of the main reasons for recommending and/or performing surgery to the cervical spine are reported symptoms?" (PX 3 p. 21)

Answer: "Yes, that would be one of the many reasons would be symptomatology that is failing conservative care. Another reason would be the concern for neurologic compromise that would not be reversible. In this situation, I think the latter is of less issue because for the most part his strength has been maintained, and so we are not as worried about loss of strength or spinal cord integrity, but remember, there are different components of the nerve. There are sensation, there's strength, and there's pain and temperature. And so in this situation, if you have chronic pain, even though your strength and sensation is normal, you're not really doing well as a patient. So we have to take care of and factor in all of those but I'm not so worried about compromise neurologically on this patient." (PX 3 pp. 21-22)

Question: "You would agree with me that you can't state with any medical certainty that the symptomology he is reporting is related to all of those levels, correct?"

Answer: "Oh, I disagree, I mean, We do this a lot. So I would say if you want to split out his pain from radicular pain, I believe it's predominantly C5-6, C6-C7, C7-T1, those 3 levels. And if you want to look at axial neck pain and add that in, then C4-5 would also be a component. If you don't have axial neck pain, then you won't treat C4-5. You would just treat C5-6, C6-C7, C7-T1." (PX 3 pp. 22-23)

Question: "I think you testified he really doesn't have any functional deficits at this point?" (PX 3 p. 24)

Answer: "I don't think he has a strength deficit. Even when I first saw him, just a little touch of weakness but nothing overly bad. For the most part he was 5/5." (PX 3 p. 24)

Question: "In this particular case you said your ultimate goal is to get the gentleman back to full duty, and to do so you believe he requires 4 level cervical disc replacement. Do you believe if you do, in fact perform a surgery, there that he is going to get back to full duty?" (PX 3 p. 30)

Answer: "If we were just talking about his neck, absolutely. No question in my mind. What makes this guy complicated is his low back. And so his low back is a much more difficult animal to treat and I'm much more cautious regarding my predictions on that. So in that circumstance, his low back, it may be the better part of valor to have permanent restrictions on his low back and not to do anything more, but from a neck standpoint then the question is well why do surgery at all if you're going to require permanent restrictions. That last office visit I directly asked him is this something that is tolerable for you, can you live with this if I do not do anything and just put you on permanent restrictions, let's say hypothetically, and you can't go back and be a firefighter. He was fairly adamant that he did not want to live like this ongoing for the rest of his life. That's what then tripped us into saying, yes, let's start with the neck." (PX 3 pp. 30-31)

Dr. Gornet testified it was reasonable for Petitioner to continue physical therapy and chiropractic care while awaiting surgical approval. This treatment was designed to keep Petitioner's pain symptoms under control and keep Petitioner from needing narcotics before surgery. (PX 3 p. 38)

Deposition of Dr. Michael Chabot

Dr. Chabot's deposition was taken on February 21, 2025. (RX 1). Dr. Chabot testified that Dr. Gornet recommends surgical intervention in more than 80% of the cases he reviews. (RX 1 p. 8) Dr. Chabot did not believe Petitioner was in any distress during his evaluation. He noted Petitioner took ibuprofens for general aches and pains but no prescription medication. (RX 1 pp. 10-11) Dr. Chabot felt the findings from the cervical and lumbar MRI's were chronic and degenerative in nature. (RX 1 p. 18) Dr. Chabot testified the work injuries caused permanent strains of Petitioner's cervical and lumbar spines. (RX 1 p. 21) Dr. Chabot attributed Petitioner's ongoing symptoms to the May 2024 work injuries. (RX 1 p. 22) Dr. Chabot opined Petitioner did not require additional treatment; reasoning Petitioner was managing his symptoms quite well with over-the-counter medication a couple times a day. Petitioner demonstrated no significant functional deficits. (RX 1 p. 23) When asked whether the proposed cervical surgery was reasonable and necessary, Dr. Chabot stated: "I would say that I would not perform that surgery

based on my examination and the patient's complaints at the time I evaluated him." (RX 1 p. 24) He opined the risks of the surgery proposed by Dr. Gornet far outweigh Petitioner's need for the surgery. *Id.* Dr. Chabot stated with a four-level procedure, you have much higher risk for complications, which include infection, bleeding, death, dysphasia, dysphonia, Horner's syndrome, subsidence, implant failure, and heteropic bone formation that results in later fusion. (RX 1 p. 25) He opined surgery would be performed to address degenerative changes. (RX 1 p. 26)

Dr. Chabot testified Dr. Gornet's "napalm technique where you do every single level that has degeneration" is not what most people do. (RX 1 p. 29) Dr. Chabot opined that Petitioner's symptoms had significantly improved over time. (RX 1 p. 40) Dr. Chabot opined it was not uncommon for a 57-year-old male to have intermittent back or neck complaints not associated with any specific injury given their age and degree of degeneration associated with advancing age. (RX 1 p. 41) He opined Petitioner has much more extensive spine disease than most 57-olds he sees. (RX 1 p. 44). He characterized Petitioner's level of deterioration as extensive and severe. *Id.* Dr. Chabot testified the surveillance video "in no way changed" his opinions in the case. (RX 1 p. 50) Dr. Chabot testified that he believed Petitioner should undergo an FCE. If the FCE showed that Petitioner could not perform the physical demands of a Firefighter/Paramedic, then Petitioner would have to stop being a Firefighter/Paramedic. (RX 1 pp. 50-51)

CONCLUSION OF LAW:

Issue F – Causation:

Based upon the chain of events, the medical records, Petitioner's consistent and credible testimony and the expert opinions of Dr. Gornet and Dr. Chabot, the Arbitrator finds and concludes that Petitioner's current conditions of ill-being, 1) aggravation of pre-existing cervical pathology, as well as an acute disc injury at C6-7 and C7-T1, and 2) aggravation of pre-existing lumbar condition, as well as an acute herniation at L2-3, are causally related to his work accidents of May 4, 2024, and May 5, 2024.

First, by history, prior to the work injuries on May 4, 2024, and May 5, 2024, Petitioner's cervical and lumbar spines were asymptomatic, and he was physically capable of performing the essential functions of a Firefighter/Paramedic. Following his May 2024 work injuries, Petitioner's cervical and lumbar spine have remained symptomatic, and he is physically unable of performing the essential duties of a Firefighter/Paramedic. His symptoms, including radiculopathy into the upper and lower extremities, have waxed and waned in their severity and frequency, but Petitioner credibly testified that he has always had some level of pain since the May 2024 work injuries.

Second, Dr. Gornet creditably testified that Petitioner's complaints and need for treatment were causally related to the work injuries on May 4 and May 5, 2024.

Lastly, Dr. Chabot, the IME doctor, also agreed that Petitioner's work injuries have caused permanent aggravations of his cervical and lumbar conditions.

Issue J - Medical benefits

The Arbitrator finds and concludes that Petitioner's treatment to date has been reasonable, necessary and causally related to his May 4, 2024 and May 5, 2024 work injuries. 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:

- Multicare Specialists: \$58,790.00, and
- MFG Spine L.L.C: \$241.13

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 and concludes that Petitioner is entitled to prospective medical treatment recommended by Dr. Gornet. Therefore, Respondent shall approve and pay for the surgical recommendations outlined by Dr. Gornet. This conclusion is supported by the testimony of Dr. Gornet, Petitioner and Dr. Chabot.

First, Dr. Gornet credibly and persuasively testified that it was reasonable and necessary for Petitioner to undergo a 4-level cervical disc replacement to cure and relieve the symptoms caused by the May 2024 work injuries.

Second, Petitioner credibly testified he continues to suffer from his work injuries and that conservative treatment and activity modification have not adequately ameliorated his symptoms. Petitioner wishes to undergo the proposed cervical surgery in order to improve his quality of life, which is reasonable and persuasive.

Lastly, Dr. Chabot did not testify that it was unreasonable to perform the 4-level disc replacement, Dr. Chabot simply stated he would not do that surgery. Dr. Chabot believes Petitioner should forgo the surgery and instead undergo an FCE. It is clear Dr. Chabot does not dispute that Petitioner continues to suffer from his work injuries and that those continued complaints most likely will prevent him from safely being a Firefighter/Paramedic in the future. Dr. Chabot simply believes Petitioner should live with his continued symptoms, which is not an unreasonable option. However, Petitioner is not required to live with his symptoms when there is a reasonable surgical option to address his complaints. Therefore, Dr. Chabot's opinions are less persuasive than Dr. Gornet's.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012716
Case Name	Todd Holder v. City of Edwardsville
Consolidated Cases	24WC012709
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0197
Number of Pages of Decision	27
Decision Issued By	Kathryn Doerries, Commissioner, Stephen Mathis, Commissioner

Petitioner Attorney	Nathan Becker
Respondent Attorney	Andrew Keefe

DATE FILED: 6/30/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Holder,

Petitioner,

vs.

NO. 24WC012716

City of Edwardsville,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 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.

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.

June 30, 2026

O: 05/05/26

SJM/sj

044

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich

Amylee H. Simonovich

DISSENT

I respectfully disagree with the majority's decision affirming the prospective medical care awarded for the four-level cervical disc replacement surgery recommended by Dr. Gornet. Under Section 8(a) of the Act, claimants are entitled to receive medical benefits for all necessary medical and surgical services so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a). As discussed in greater detail below, Petitioner has failed to show the proposed four-level disc replacement surgery is reasonably required. Petitioner is not suffering from any significant functional deficits and the neurological findings are few. Though Dr. Gornet noted diminished sensation in the left upper extremity, he found sensory change involving only two dermatomes supplied by the C7 and C8 nerve roots and no sensory changes involving the other disc levels. Repeated examinations of Petitioner's motor function and reflexes were within normal limits, and there were no abnormal findings with the Spurling's test. There was also no objective medical evidence demonstrating that all four discs are pain generators as Dr. Gornet failed to correlate Petitioner's symptoms with appropriate diagnostic testing as injections were limited to two disc levels and no EMG/nerve conduction testing was ordered. Additionally, the Food and Drug Administration (FDA) has not approved any disc prosthesis currently on the market for use in more than two contiguous disc levels. Furthermore, current FDA approval for cervical disc replacement is restricted to the cervical disc levels between C3-C4 and C6-C7. FDA approval has not been given for disc replacement at C7-T1, which is one of the discs Dr. Gornet proposes to replace. The record lacks evidence demonstrating a generally accepted consensus supporting the off-label use of artificial disc devices for three- and four-level procedures. As such, Dr. Gornet has not provided a sufficient medical rationale for operating at all four levels and he has not credibly shown that the potential benefits outweigh the risks. Finally, this Commission has previously denied prospective medical care benefits for four-level and three-

level disc replacement surgeries, and absent new peer-reviewed research studies and objective medical evidence confirming all disc levels are pain generators, I see no reason to depart from those prior decisions. I believe this Commission is obliged to have consistency in its decisions.

On June 25, 2024, Petitioner presented to Dr. Gornet complaining of neck and back pain which began at work on May 4, 2024. Petitioner described pain at the base of the neck and left trapezius, and pain in the left shoulder extending into the left scapula and upper arm with tingling down the arm to his ring finger. (PX1 at 1) On examination, Petitioner was found with 5/5 motor strength in all groups. (PX1 at 2) Dr. Gornet did not detect any significantly abnormal deep tendon reflexes involving the upper extremity. Dr. Gornet did not document a positive Spurling's test. In fact, there is nothing in his office visit notes showing he performed a Spurling's test. Dr. Gornet's only objective neurological finding was diminished sensation involving the C7 and C8 dermatomes on the left side. He did not mention any abnormal sensory findings involving any other disc root levels. Dr. Gornet reviewed the cervical x-rays and noted loss of disc height at C5-C6 and C6-C7. Dr. Gornet also reviewed the cervical MRI and noted the imaging showed multi-level degenerative disc pathology bilaterally at C4-C5, C5-C6, C6-C7, and C7-T1 with left-sided extruded disc at C7-T1. (PX1 at 3) Dr. Gornet diagnosed an aggravation of preexisting condition with acute disc injury at C6-C7 and C7-T1. There was no diagnosis given for radiculopathy. Dr. Gornet surmised that Petitioner's axial neck pain may emanate from each of those four disc levels and commented that C3-C4 may also be a potential source of pain. He referred Petitioner to Dr. Blake for steroid injections at two levels, C6-C7 and C7-T1.

On July 9, 2024, Dr. Blake administered an epidural steroid injection at C7-T1, and on July 23, 2024 she administered an injection at C6-C7. At trial, Petitioner agreed his pain level prior to the first injection was a 3/10 if that's what the medical records showed. (T. 45) Per Dr. Blake's procedure reports, she documented a 0/10 pain level after the first injection and a 2/10 pain level after the second injection. (PX2 at 2, 15) Petitioner disputed Dr. Blake's documented post-injection pain levels, explaining that with each injection he did not notice any immediate same-day relief but he did notice some minor relief about three to five days post injection which lasted until his pain returned during the second week. (T. 45, 22) On August 12, 2024, Petitioner saw Dr. Brooks for follow-up and reported considerable improvement regarding his neck injury. (PX4 at 53)

Petitioner returned to Dr. Gornet on August 19, 2024, and reported the first injection at C7-T1 helped substantially for two to three weeks and the second injection also helped but Dr. Gornet did not document the duration of relief from the C6-C7 injection. (PX1 at 4) Dr. Gornet noted Petitioner's "pain is more left side of his neck, left trapezius, left shoulder, down his left arm into his triceps region but also crossing into his volar forearm and little finger." While the positive pain relieving responses to the two cervical injections provided consistent diagnostic evidence identifying the discs at C6-C7 and C7-T1 as potential pain generators, Dr. Gornet did not recommend separate injections for any of the other disc levels. He simply concluded, "My tentative thinking is while he does have a disc injury at C3-4, I would treat C4-5, C5-6, C6-7, and C7-T1. This would be a four-level cervical disc replacement." (PX1 at 4)

On August 20, 2024, Petitioner saw his treating chiropractor, Dr. Brooks, and reported Dr. Gornet's recommendation for cervical disc replacements. Dr. Brooks documented Petitioner's self-reported pain levels as 3/10 on average which could increase to 5/10. (PX4 at 59) There was no documented upper extremity pain. On September 4, 2024, Dr. Brooks documented 4/10 pain level for the neck. (PX4 at 71) There was no documented upper extremity pain.

On September 12, 2024, Dr. Chabot performed an IME at Respondent's request. (RX1, Dep. Ex#2) At the examination, Petitioner reported his neck complaints were much improved and described his symptoms at that time as more like an aching, sometimes stabbing pain. According to Dr. Chabot, Petitioner further complained of scapular pain but reported his radiating symptoms into the left upper extremity had almost completely resolved. (RX1, Dep. Ex#2 at 2) At trial, Petitioner disputed this history, explaining he completed a pain diagram omitting upper extremity symptoms only because he did not have upper extremity symptoms that day and the instructions on the pain diagram asked for symptoms felt that day. (T. 31-33) Petitioner testified he did mark the diagram for hand numbness and completed a questionnaire on which he endorsed radiating symptoms in his left arm. (T. 34-35) Petitioner further testified that he continued to have radiating upper extremity symptoms which he verbally reported to Dr. Chabot. Petitioner testified he had not been taking any prescribed medication other than daily over-the-counter Ibuprofen which was consistent with Dr. Chabot's report.

On examination of the cervical spine, Dr. Chabot noted there was no tenderness to palpation and no spasm. (RX1, Dep Ex#2 at 12) Dr. Chabot noted Petitioner demonstrated forward flexion to 75 degrees with some complaints of left posterior cervical spine ache. Petitioner performed side-rotation to 75 degrees bilaterally and had mild ache with full rotation to the left. Neurologically, the Spurling's test was negative and Petitioner was found with symmetrical deep tendon reflexes, 5/5 motor strength, and sensation was intact. Dr. Chabot reviewed the cervical spine x-rays obtained on June 25, 2024, and noted evidence of "slightly diminished" disc space height at C4-C5, C5-C6, C6-C7 and C7-T1. (RX1, Dep Ex#2 at 13) Neural foramina narrowing was noted bilaterally from C4 to T1 associated with uncovertebral joint hypertrophy. Dr. Chabot also reviewed the MRI study performed on May 10, 2024. Dr. Chabot noted evidence of multilevel disc desiccation. At the C4-C5 level there was evidence of advanced right foraminal narrowing associated with disc spur complex. Dr. Chabot noted that C5-C6 had evidence of disc spur complexes resulting in bilateral foraminal stenosis. C6-7 had evidence of a left-sided neural foraminal disc protrusion with left foraminal stenosis. There was also evidence of right foraminal narrowing associated with disc spur complexes. At C7-T1, Dr. Chabot noted severe left foraminal stenosis associated with disc spur complexes. (RX1, Dep Ex#2 at 13)

It was Dr. Chabot's impression that Petitioner suffered neck and back strains with chronic multilevel degeneration of the cervical and lumbar spine. (RX1, Dep Ex#2 at 13) Dr. Chabot noted there was "questionable" indication for "prior cervical radiculopathy." Dr. Chabot opined that the neck and back strains were causally related to the work injuries. Dr. Chabot found it notable that the physical therapist, Corey Voss, consistently reported there was no evidence of neurologic changes involving the upper or lower extremities. (RX1, Dep Ex#2 at 13) Dr. Chabot commented

that Corey Voss's therapy records indicated Petitioner primarily had evidence of soft tissue changes and restricted motion, which by Petitioner's own account had improved. Dr. Chabot further noted Petitioner had reported the prior injections did not offer any substantial improvement in his complaints. Dr. Chabot further commented that his physical examination findings lacked any evidence of persisting functional deficits that would preclude Petitioner from returning to some form of employment. Dr. Chabot found the treatment and therapy provided to date was reasonable and necessary; however, it was his recommendation that Petitioner return to work with a 50-pound lifting limit and undergo an FCE to further assess his physical capabilities. Dr. Chabot opined there was no need for further therapy or treatment.

On September 19, 2024, Petitioner returned to Dr. Brooks with a documented 3/10 to 4/10 pain level. (PX4 at 85) There were no documented upper extremity symptoms at this visit; however, Petitioner again saw Dr. Brooks on October 15, 2024, and reported he began experiencing an increase in left upper extremity symptoms after discontinuing conservative treatment two and a half weeks earlier. (PX4 at 93) Dr. Brooks ordered resumption of physical therapy. (PX4 at 94)

Dr. Gornet next re-evaluated Petitioner on October 17, 2024. (PX1 at 5) Dr. Gornet noted Petitioner complained of neck pain located more to the left side with pain in the left trapezius, left shoulder, and pain going down the left arm, particularly along the triceps. (PX1) It was Dr. Gornet's assessment that Petitioner had a multi-level problem in his cervical spine, primarily on the left side at C5-C6, C6-C7, C4-5, and "even C3-4." Dr. Gornet then stated, "He really has a five-level problem. I would probably hold on treatment at C3-4 and just treat C4-5, C5-6, C6-7, and C7-T1." Dr. Gornet commented, "I believe C3-4 is injured but it may be sufficient enough to stand on its own and not be treated." Dr. Gornet felt the best option to cure and relieve the effects of Petitioner's cervical injury was a four-level cervical disc replacement. Dr. Gornet did not explain why he believed all four disc levels were pain generators. No diagnostic injections had been ordered for the other disc levels at C4-C5 and C5-C6. No EMG/nerve conduction test had been ordered to validate specific nerve roots correlating with the radicular complaints.

Dr. Gornet testified via deposition on December 16, 2024. Dr. Gornet confirmed it was his opinion that Petitioner sustained an aggravation of preexisting cervical spine condition with acute disc injury at C6-C7 and C7-T1. (PX3 at 9) In support of his recommended four-level disc replacement surgery, Dr. Gornet noted the MRI of the cervical spine showed multi-level disc pathology with foraminal narrowing and testified that treating "only a part of this will not be sufficient based on our understanding of these problems and treating other patients with like or similar injuries." (PX3 at 12-13) Dr. Gornet further testified, "[w]e published in this area" and "we've written a paper regarding cervical disc replacement and work-related injuries, which is considered a very high profile paper in a high profile journal, and it clearly spells out that *you have to treat all of the pathology* present to get the patient back to work." (Emphasis added.) (PX3 at 13) Dr. Gornet did not elaborate and he did not distinguish between symptomatic pathology and asymptomatic pathology. Dr. Gornet did not identify the journal and he did not say whether or not his published paper was peer-reviewed. Dr. Gornet did not mention the existence of any other

medical studies by other physicians. For additional support, Dr. Gornet testified a four-level disc replacement would help get Petitioner back to full duty work, though he qualified that statement by noting he was speaking only of the cervical spine. (PX3 at 13) Treatment of the lumbar spine was deferred pending completion of the cervical spine treatment. Regarding his exam findings for the cervical spine, Dr. Gornet testified to the following:

His physical complaints were consistent with the pathology identified. *His exam for the most part was nonfocal, so there wasn't a correlation there.* But for the most part I did feel that the structural pathology seen on MRI fit with his subjective complaints. (Emphasis added.) (PX3 at 9)

On cross-examination, Dr. Gornet testified Petitioner's cervical condition included components of radiculopathy and axial neck pain, with the radiculopathy originating from C6-C7 and C7-T1 and "maybe also a little at C5-C6." (PX3 at 21). Dr. Gornet testified that the decision-making for surgery is generally based on the patient's symptoms and concern for neurological compromise that could become irreversible if not addressed. (PX3 at 21) Regarding Petitioner, however, Dr. Gornet testified the concern for neurological compromise is "less of an issue because for the most part his strength has been maintained, and so we're not as worried about loss of strength or spinal cord integrity." (PX3 at 21) Dr. Gornet further testified the components of a nerve include sensation and pain, and if a patient has chronic pain, then the patient is not doing well even though they have normal strength. (PX3 at 22) Dr. Gornet thus concluded, "So we have to take care of and factor in all of those but I'm not so worried about compromised neurologically on this patient." Dr. Gornet disagreed with the notion that Petitioner's pain complaints cannot be correlated with all four disc levels. (PX3 at 22-23) Dr. Gornet then testified that Petitioner's radicular pain was emanating from three disc levels at C5-C6, C6-C7, and C7-T1 (PX3 at 23) This was a modification compared to Dr. Gornet's testimony on direct examination that Petitioner had radiculopathy emanating from two disc levels and "maybe also a little at C5-C6." (PX3 at 21) Dr. Gornet further testified Petitioner also had axial neck pain at C4-C5. (PX3 at 23) Dr. Gornet commented that if Petitioner did not have axial neck pain then he would not operate on C4-C5. Dr. Gornet also opined that Petitioner had axial neck pain at the four disc levels, C4-5, C5-C6, C6-C7, C7-T1. (PX3 at 24) Asked if he agrees Petitioner has no functional deficits, Dr. Gornet replied, "I don't think he has a strength deficit. Even when I first saw him, just a little touch of weakness but nothing overly bad. For the most part he was 5/5." (PX3 at 24)

Dr. Gornet further testified that operating on all four levels would be preferable for two reasons. First, there would be a chance a two-level disc replacement might not be successful for getting the Petitioner back to full duty work, and second, if only two levels are addressed with disc replacements then any future procedure which may be needed to address the other levels could create increased risks of complications since the future operative zone would be about a centimeter away from the adjacent implanted disc device. (PX3 at 28) This explanation, of course, presupposes there is pain-generating pathology with the other two discs, as Dr. Gornet has opined that Petitioner's pain complaints correlate with all four disc levels. Since Dr. Gornet has never ordered diagnostic injections for the other two levels, and has not obtained EMG/nerve conduction

testing to validate the origins of the radiculopathy, there is a significant concern that Dr. Gornet's recommended four-level disc replacement may replace discs which are asymptomatic and which may never become symptomatic.

Following his deposition, Dr. Gornet re-evaluated Petitioner on January 6, 2025. (PX1 at 6) Petitioner continued to complain of pain at the base of the neck with pain extending to the left trapezius, shoulder, and down the upper arm. Petitioner also complained of some tingling. Dr. Gornet noted Petitioner continued to exhibit 5/5 motor strength. No neurological deficits were documented. Dr. Gornet noted Petitioner was continuing to work light duty, which was necessitating ongoing physical therapy. Dr. Gornet commented, "Dr. Chabot had felt that he should work light duty, and I have no problem with this." Dr. Gornet further indicated the light duty "times out" in April. Dr. Gornet continued to recommend the four-level disc replacement.

Dr. Chabot testified via deposition on February 21, 2025. (RX1) Dr. Chabot is a board certified orthopedic surgeon with a subspecialty in spine surgery. Dr. Chabot testified he has been practicing spine surgery for 30 years and estimated cervical spine cases make up about 40% of his surgical practice and the lumbar spine cases make up about 60% of his surgical practice. Dr. Chabot testified he performs decompressions, fusions, and artificial disc replacements. (RX1 at 6) Parenthetically, Dr. Gornet challenged Dr. Chabot's expertise, testifying that Dr. Chabot was commenting on a surgery he's never done, adding "I know that for a fact." (PX3 at 36) Dr. Gornet's belief is contradicted, however, by Dr. Chabot's testimony and there is nothing in the record before us to endorse Dr. Gornet's belief that Dr. Chabot has never performed an artificial disc replacement.

Dr. Chabot testified Petitioner described his neck pain as an aching pain, sometimes a stabbing pain, which had improved since the work injuries. (RX1 at 9) Dr. Chabot testified that Petitioner reported his left upper extremity complaints had almost completely resolved, with his radiating pain localized in the scapular region. (RX1 at 9-10) As mentioned above, Petitioner denied his upper extremity symptoms had resolved. Per Dr. Chabot, Petitioner also reported he was not taking prescription medications, which was consistent with Petitioner's testimony. (RX1 at 10-11) Dr. Chabot testified Petitioner had a negative response with Spurling's test. Dr. Chabot further testified Petitioner exhibited 5/5 motor strength in the upper extremities and normal reflexes. Dr. Chabot further noted a negative Hoffman's sign which is a test for cord compression. (RX1 at 11-12) Dr. Chabot testified Petitioner had a relatively normal neurological examination. (RX1 at 12) Regarding the negative Spurling's test, Dr. Chabot explained the test is a neurocompressive test designed to reproduce symptoms associated with neural compression due to disc herniation or stenosis, and in this case Petitioner had no reproducible upper extremity symptoms in response to the test. (RX1 at 12) Dr. Chabot testified Petitioner was able to move about the room without difficulty. (RX1 at 11) Acknowledging the neurological deficits noted by Dr. Gornet two months prior, Dr. Chabot testified that his exam findings were in line with the exam findings of the physical therapist, Corey Voss, whose therapy records showed no neurological deficits over the course of many months in therapy. (RX1 at 13)

Regarding Petitioner's left upper extremity pain, Dr. Chabot testified he diagnosed that aspect of the Petitioner's cervical condition as "questionable prior cervical radiculopathy" because at no point in time did Corey Voss note evidence of neural deficits in the extremity to confirm the presence of an active radiculopathy. (RX1 at 19-20) Additionally, Dr. Chabot did not detect an active radiculopathy during his examination. (RX1 at 20) Dr. Chabot testified there was no evidence of neurologic changes or sensory changes or reflex changes, and the Spurling's test was negative. Dr. Chabot credibly opined that Petitioner's cervical spine did not require further intervention. He testified Petitioner was "a 57-year-old who used over-the-counter ibuprofen twice a day, and his physical examination lacked any evidence of functional deficits." (RX1 at 21) Dr. Chabot testified it was his opinion that Petitioner was not a candidate for multi-level cervical spine surgery and did not require additional treatment. (RX1 at 21) Dr. Chabot noted Petitioner appeared to be managing his symptoms quite well with over-the-counter medications. (RX1 at 23)

Dr. Chabot further testified he viewed surveillance video after the IME and authored a second report regarding his findings. (RX1 at 23) Dr. Chabot testified the video showed Petitioner mowing the lawn, using a weed eater, and performing yard work without any evidence of functional deficits. (RX1 at 23-24) Dr. Chabot testified the surveillance video supported his opinions. (RX1 at 23-24)

Regarding Dr. Gornet's recommended surgery, Dr. Chabot testified Petitioner has no significant functional deficits, no neural deficits, and Dr. Gornet is recommending a four-level cervical disc replacement which has the potential for pretty significant complications. (RX1 at 24) Dr. Chabot opined that the risks of the surgical procedure far outweigh the patient's need. Dr. Chabot further described the potential complications with cervical disc replacement. (RX1 at 25) Some complications are of a more general nature, similar to the complications seen with cervical fusions, and include infection, bleeding, death, dysphasia, which is difficulty swallowing, and dysphonia, which is disruption of the vocal cord function. Patients can also develop Horner's syndrome, which is damage to the sympathetic trunk resulting in varying neurologic abnormalities involving the facial features and muscles of the face. Dr. Chabot testified there are also potential complications specific to disc replacement, including subsidence (settling or sinkage of the implant into the vertebral bone), implant failure, and implant wear. Patients can also develop heterotopic bone formation; bone that forms along the anterior portion of the disc replacement implants as a response to the surgical procedure, as well as formation of bony spurs which can develop into a fusion at that level. Dr. Chabot testified that a four-level procedure presents a much higher risk for all of these potential complications. (RX1 at 25-26) Dr. Chabot further testified that operating at the C7-T1 level is challenging and very difficult due to the structural angulation involving the T1 vertebra. (RX1 at 26) Dr. Chabot agreed Petitioner may have significant axial neck pain given the extent of the degenerative changes seen in the imaging; however, Dr. Gornet's recommendation to operate at four disc levels, which Dr. Chabot characterized as a "napalm technique where you do every single level that has degeneration," suggests he does not really know where the problem is located and "operating at multiple levels for that reason is not what most surgeons do." (RX1 at 28-29)

On cross-examination, Dr. Chabot clarified his prior testimony regarding the absence of neurological deficits in the therapy records. Dr. Chabot agreed Corey Voss frequently documented a positive cervical compression test; however, Dr. Chabot noted there were no documented findings for numbness, weakness, or reflex changes by Mr. Voss, and assuming Mr. Voss was referring to the Spurling's test, there must be radicular complaints and neurological changes present in order to have a valid positive finding with a Spurling's test. (RX1 at 32-34) Dr. Chabot explained the Spurling's test is a widely accepted neurocompression test and a patient must first have radicular complaints and neurological changes before making a positive Spurling's test because the Spurling's test is designed to exacerbate or reproduce those complaints. Performing a Spurling's test is meaningless if a patient has no radicular complaints and neurological changes. Dr. Chabot further testified we do not know what Mr. Voss meant by positive compression test given the absence of radicular signs. (RX1 at 34-35) Likewise, Dr. Chabot explained that Mr. Voss's documented positive cervical distraction findings are not indicative of radiculopathy because it's a non-specific test which can yield relief of symptoms even if the condition is soft-tissue related since the distraction test involves a traction or decompression maneuver which reduces tension in the muscles. (RX1 at 36)

Petitioner testified that the axial neck pain affecting his neck has improved since the work injuries. (T. 26) That said, Petitioner testified he continues to have episodic pain at the base of his neck on a daily basis "at some point or another" with varying intensity. (T. 26) Regarding his radiating pain, Petitioner testified those symptoms have improved in their intensity but those symptoms continue to ebb and flow and their timing is always different. (T. 27) Petitioner also stated the radiating symptoms occur daily. On cross-examination, Petitioner agreed his symptoms had improved since the injury but testified he plateaued and has not had any further improvement. (T. 43) Petitioner testified he medicates with Ibuprofen twice daily and does not take any narcotic pain medications except hydrocodone "every once in a while" when his pain is severe. (T. 49) Petitioner did not recall Dr. Gornet ever recommending EMG/nerve conduction testing. (T. 49) Petitioner further testified about retirement and stated his goal is to retire when he reaches age 62. (T. 64) As Petitioner's date of birth was May 12, 1967, Petitioner is planning to retire in May 2029. Thus, the proposed four-level disc replacement is purportedly intended to help Petitioner return to full duty work in a position for which he is contemplating retirement in about three years.

Petitioner testified he was given a choice by Dr. Gornet, either have the recommended four-level surgery or live with his condition under permanent restrictions. (T. 25) Petitioner testified he had received treatment at MultiCare Specialists for the past eleven months which included activity modification which has failed to resolve his condition. Petitioner testified he desires to undergo the recommended surgery as he feels the surgery offers his only hope for regaining his prior quality of life. (T. 25-26) Left unsaid was whether Dr. Gornet ever offered Petitioner the choice of a two-level disc replacement, and deferring intervention at the other two levels for future consideration if needed. It is also unknown if Dr. Gornet ever apprised Petitioner regarding the off-label use of the artificial disc device since the Food and Drug Administration (FDA) has only approved use of the device for one level or two contiguous levels.

Pursuant to Rule 201 of the Illinois Rules of Evidence, judicial notice of facts may be taken when the facts are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). Judicial notice may be taken whether requested by a party or not, and judicial notice may be taken at any stage of the proceeding. Ill. R. Evid. 201(c), 201 (f) (eff. Jan. 1, 2011). This Commission has considered the scope of FDA approval in prior cases and it is appropriate to take judicial notice of information available on government websites including the FDA. See *In re Marriage of Jones*, 2023 IL App (1st) 221369-U, where the Court held judicial notice taken by the trial court of information from the FDA and CDC was proper in a dispute over a petition for vaccination of the minor child against Covid-19. As noted in that decision, “This court has previously held that information on government websites is sufficiently reliable such that the court may take judicial notice of the information. (citation omitted.) Here, the trial court took judicial notice of the CDC recommendations, the IDPH document, and the FDA news release, all of which are from official government websites.” *Id.* at P 51. See also *People vs. Runyon*, 2023 IL App (4th) 230058-U, where the Court expressed the following:

We take judicial notice that Zoloft is the brand name for sertraline, so defendant was continuing to take one of the medications he had been previously prescribed. *Sertraline (Marketed as Zoloft) Information*, U.S. Food & Drug Administration, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/sertraline-marketed-zoloft-information> (last visited Oct. 25, 2023). *We may take judicial notice on appeal* of facts that are generally known or readily verifiable from sources of indisputable accuracy, such as the Food and Drug Administration. (Emphasis added.) *Id.* at P46.

Given the importance of the issue before us, I take judicial notice of FDA approval for medical devices, which can be obtained from the agency’s online database (“Devices@FDA”), found at <https://www.accessdata.fda.gov/scripts/cdrh/devicesatfda/index.cfm>. Using the search terms “cervical disc prosthesis” reveals the following.

On July 16, 2007, the FDA approved the Prestige Cervical Disc system for single-level use between C3 and C7. On December 17, 2007, the FDA approved the ProDisc TM-C total disc replacement device for single-level use between C3 and C7. On August 7, 2013, the FDA approved the Mobi-C cervical disc prosthesis for single-level use between C3 and C7. On August 23, 2013, the FDA approved the Mobi-C cervical disc prosthesis for two-level use at two contiguous levels from C3 to C7. On July 24, 2014, the FDA approved Prestige LP cervical disc for single-level use between C3 and C7. (This device was under a temporary recall from March 2018 through November 2, 2020 due to reported complaints of drill bits breaking during procedures, with subsequent investigation showing the interaction between drill guide and drill bit could lead to drill bit breakage. This issue was resolved by the device manufacturer.) On February 6, 2019, the FDA approved the M6-C Artificial Cervical Disc for single-level use between C3 and C7. And on March 25, 2020, the FDA approved the Simplify® Cervical Artificial Disc for single-level use between C3 and C7. There are a few other devices approved for the market; however, it

is clear the FDA has not approved artificial disc devices for use in the cervical spine beyond two contiguous levels. It is also noteworthy that all of the above listed medical devices were approved only for C3 through C7. The FDA has not approved disc replacement for the C7-T1 level, which is one of the levels Dr. Gornet is recommending for replacement.

The lack of FDA approval is not controlling; however, the lack of FDA approval is a valid factor to be considered. On several occasions, this Commission has previously denied medical benefits for non-FDA approved diagnostic testing and treatment services. In *Salley vs. State of Illinois, Choate Mental Health*, 21 IWCC 269, 2021 Ill. Wrk. Comp. LEXIS 249, the Commission denied medical expenses incurred for MRI spectroscopy ordered by Dr. Gornet. Dr. Gornet testified that MRI spectroscopy was being used in FDA clinical trials in which he was involved; however, the Commission noted that the fact that the FDA *might approve* the procedure in the future does not establish that the procedure is generally accepted, reasonable or necessary in the present. In *Bauer vs. State of Illinois, Chester Mental Health Ctr.*, 22 IWCC 391, 2022 Ill. Wrk. Comp. LEXIS 381, the Commission again considered Dr. Gornet's recommended use of MR Spectroscopy and affirmed the arbitrator's denial of prospective medical benefits for the test. This time, Dr. Gornet testified the MR Spectroscopy had been approved by the FDA to diagnose back pain; however, the arbitrator noted the absence of any documentation corroborating FDA approval, and further noted that an internet search including the FDA's website did not show any such approval. The arbitrator also noted that the Appellate Court had recently affirmed the Commission's denial of MR Spectroscopy in *Lewis vs. Ill. Workers' Comp. Comm'n*, 2021 IL App (5th) 200302. In *Cordon vs. Healthcare Solutions*, 18 IWCC 22; 2018 Ill. Wrk. Comp. LEXIS 48, this Commission denied prospective medical benefits for a left knee cartilage restoration, consisting of a Carticel biopsy followed by Carticel implantation and anteromedialization of the tibial tubercle, which apparently had limited FDA approval for tibiofemoral lesions but not for surgery on the patella.

The Commission has also analyzed with caution treatment services considered to be experimental. See *Houston vs. K. Hovnanian Town & Country Management LLC*, 13 IWCC 116, 2013 Ill. Wrk. Comp. LEXIS 164 (prospective medical denied for recommended off-label experimental use of a cochlear implant to address persistent tinnitus where alternative recommendations had been made for a second opinion assessment and psychological evaluation). See also, *Cholewiak vs. XPO Logistics Freight, Inc.*, 20 IWCC 0380, 2020 Ill. Wrk. Comp. LEXIS 767 (denying medical expenses incurred for compound topical analgesics found to be experimental); and *Garrison vs. Cottage Care*, 10 IWCC 979, 2010 Ill. Wrk. Comp. LEXIS 1089 (denying medical expenses for experimental Phenol injections). Treatment considered experimental may still be found reasonable and necessary in appropriate settings. See e.g., *Fesi vs. Carol Stream Fire Protection District*, 13 IWCC 260, 2013 Ill. Wrk. Comp. LEXIS 292, where the treating physician recommended what he called a "sub-q spinal cord stimulator" which he developed by combining a dorsal column stimulator with a peripheral stimulator, and for which he was conducting a research study for Medtronic. The device was considered experimental and the employer's IME physician opined that the risks outweighed the benefits. On review, the Commission awarded the requested prospective medical treatment. A significant factor favoring

the proposed treatment was the fact that an external trial stimulator would be used first to determine its success for the claimant before implanting a permanent device. The Commission therefore decided to award the trial stimulator, and if successful, then the employer was to authorize the permanent implant.

This Commission has also previously denied prospective medical benefits for a three-level and four-level cervical disc replacement on account of the lack of FDA approval. See *Burgdorf vs. State of Illinois, Chester Mental Health Center*, 25 IWCC 0280, 2025 Ill. Wrk. Comp. LEXIS 534 (denial of four-level disc replacement); *Helens vs. Global Brass*, 18 IWCC 460, 2018 Ill. Wrk. Comp. LEXIS 1184 (denial of three-level disc replacement), and *Lupardus vs. Menasha Corp.*, 2017 Ill. Wrk. Comp. LEXIS 130, 17 IWCC 9 (denial of three-level disc replacement).

Even setting aside the lack of FDA approval as a factor, there is a lack of objective medical findings to support a four-level cervical disc replacement. Dr. Gornet's medical records and testimony support diminished sensation for only two dermatomes and his remaining findings on examination were essentially within normal limits. During his deposition, Dr. Gornet testified that while Petitioner's complaints were consistent with the pathology identified in the MRI, Petitioner's "*exam for the most part was nonfocal, so there wasn't a correlation there.*" (PX3 at 9) Dr. Gornet never ordered diagnostic injections for the other two disc levels and he never ordered EMG/nerve conduction testing.

Section 19(e) of the Act sets forth the following regarding decisions rendered by the Commission:

Decisions rendered by the Commission and dissents, if any, shall be published together by the Commission. The conclusions of law set out in such decisions shall be regarded as precedents by arbitrators for the purpose of *achieving a more uniform administration of this Act*. (Emphasis added) 820 ILCS 305/19(e).

Accordingly, I believe this Commission is obliged to have consistency in its decisions. Though every claim brought before the Commission must be decided on the facts and evidence presented on a case-by-case basis, issues presented to the Commission which share commonality, such as off-label medical procedures exceeding FDA approval, should be carefully and cautiously analyzed with a view towards achieving a consistent body of law to avoid the appearance of outcomes determined by chance. I acknowledge that three-level and four-level cervical disc replacement procedures have been awarded in other cases; however, in my view, the off-label use of these devices should not be authorized without credible objective medical evidence demonstrating that each of the discs recommended for replacement is an actual pain generator.

In conclusion, I find there is no objective medical evidence validating all four disc levels are pain generators. Dr. Gornet ordered injections at two levels, C6-C7 and C7-T1, but he did not order injections for the other disc levels. Dr. Gornet did not order EMG/nerve conduction testing to help identify and correlate Petitioner's radiating symptoms with any specific nerve roots. Dr.

Gornet has failed to justify replacement of four discs given the minimal neurological findings and the absence of functional deficits. His recommended surgery uses an artificial disc device which has not been approved by the FDA for use in more than two contiguous disc levels, and disc replacement, even for one-level, has not been approved for the C7-T1 level. Dr. Chabot described several potential complications with artificial disc replacement, the risks of which increase with the number of discs replaced. Dr. Gornet has not provided a persuasive medical rationale for replacing four cervical discs and his recommended four-level surgery is an all-of-the above approach to treat the symptoms without confirming the root cause or causes.

For all the above reasons, I respectfully dissent in part from the majority's affirmance of the arbitration award directing Respondent to provide and pay for the four-level cervical disc replacement recommended by Dr. Gornet.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

June 30, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012716
Case Name	Todd Holder v. City of Edwardsville
Consolidated Cases	24WC012709
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Andrew Keefe

DATE FILED: 5/27/2025

/s/ Bradley Gillespie, Arbitrator

Signature**INTEREST RATE WEEK OF MAY 20 2025 4.14%**

STATE OF ILLINOIS)
)SS.
 COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Todd Holder
 Employee/Petitioner

Case # **24** WC **012716**

v. Consolidated cases:

City of Edwardsville
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Bradley Gillespie, Arbitrator of the Commission, in the city of **Herrin**, on **4/2/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/4/24 & 5/5/24**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$124,924.28**; the average weekly wage was **\$2,402.39**.

On the date of accident, Petitioner was **56** 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 **\$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

Please see the order for Case Number 24WC012709. This matter was tried with Consolidate Case Number 24WC012709. Benefits were awarded in the other case.

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

MAY 27 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TODD HOLDER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos.: 24WC012709 & 24WC012716
	)	
CITY OF EDWARDSVILLE,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

PROCEDURAL POSTURE

This claim came before an Arbitrator of the Illinois Workers' Compensation Commission in Herrin, Illinois, on April 2, 2025, pursuant to Petitioner's 19(b)/8(a) petition. On May 9, 2024, Todd Holder [hereinafter "Petitioner"], filed two Applications for Adjustment of Claims alleging injuries to his Low Back/Neck/MAW resulting from work injuries sustained on May 4, 2024, and May 5, 2024, while working for the City of Edwardsville [hereinafter "Respondent"]. (Arb. Ex. 2 & Arb. Ex. 4 *respectively*) Upon motion of Petitioner, the claims were consolidated. Respondent is disputing: 1) casual connection for treatment after the September 16, 2024, IME report; 2) reasonableness and necessity of medical treatment after the September 16, 2024, IME report; and 3) prospective medical treatment.

FINDING OF FACTTestimony of Petitioner

Petitioner is a firefighter paramedic with the City of Edwardsville and currently holds the rank of Lieutenant. (Tr. p. 15) He has been employed with the City of Edwardsville for 21 years. *Id.*

Petitioner testified he injured his neck and low back on May 4, 2024, and May 5, 2024. On the evening of May 4, 2024, Petitioner responded to a structured fire and was tasked with ventilating the windows on the first and second floor as well as the house's gabled vent. Petitioner was required to deploy a 24-foot extension ladder to ventilate the windows and open the gabled vent at the roof line to assist in ventilating the interior of the structure. (Tr. pp. 15-16) Due to the house having metal awnings over each window, Petitioner had to carry and reposition a 24-foot extension ladder numerous times to remove the awnings on the first and second story windows on both sides before removing the windows and removing the gable vent. (Tr. p. 16-17) After that, they performed general clean-up and mop up for a couple of hours. (Tr. p. 17) Upon returning to the fire station for additional clean-up, he noticed mild to moderate tightness in his left scapula and left trapezius muscles. *Id.* He self-medicated with Ibuprofen upon return to the firehouse. *Id.* While working the same 36-hour shift, on May 5, 2024, he was dispatched to assist an unresponsive patient. *Id.* While moving the patient from the bed onto the stretcher,

Petitioner was required to kneel on the mattress near the patient's right side and lift her head and upper torso. (Tr. pp. 17-18) Petitioner and coworker transferred the patient from the bed to the stretcher. (Tr. p. 18) Throughout that whole day he continued to have muscle soreness. (Tr. pp. 18-19) He once again self-medicated at the firehouse and went to bed. The following morning, he woke up to another emergency call. (Tr. p. 19) The following morning, when he got out of his bunk and went to stand up, he had severe pain and spasms in the left lumbar region as well as spasms in the left scapula radiating up to the left trapezius muscles and into the left side of the base of his neck. *Id.* After returning to the firehouse from that morning's emergency call, he reported his injuries to his supervisor. *Id.* As the day progressed his symptoms continued to worsen. *Id.*

When asked to describe his initial neck symptoms, Petitioner stated:

“... as the days progressed, the symptoms began to develop. It continued with the spasms in the left scapula, the left trapezius, and again, bilaterally now on left and right side of the neck, muscle pain, aching, tightening, the spasms. The base of the neck began to develop a burning, tingling type shooting type pain off on the left side of the lower base of the neck. That radiated down through the left trapezius. And then again, as the days went on after that, I started noticing a burning, kind of a searing, tingling sensation down the posterior triceps and then continuing down into the left palmer region, numbness, tingle, pins and needles, yeah, and that went on for probably -- until starting in mid-June, late June before I started seeing any relief of those symptoms.” (Tr. pp. 20-21)

Petitioner described his low back symptoms as: “Low back, tightening, cramping, burning, spasms predominantly left side. A lot of the muscle pain and aches and burning are bilaterally. The spasms have been predominantly on the left side. There has been occasional burning and kind of tingling sensations down the left buttock region.” (Tr. p. 21) If he sits or stands for too long, he will occasionally have numbness and tingling in one or both of his feet. (Tr. pp. 21-22)

Petitioner testified he first sought medical treatment at Multicare Specialist on May 7, 2024. (Tr. p. 22) MRI's of the lumbar and cervical spine were ordered. *Id.* After the MRI's were completed, he was referred to Dr. Matthew Gornet. (Tr. pp. 22-23) Dr. Gornet ordered continued conservative care with Multicare Specialist and referred Petitioner to Dr. Helen Blake for pain management. (Tr. p. 23) Dr. Blake performed two cervical injections and one lumbar injection. *Id.* Petitioner reported some temporary relief from the injections, but no combination of conservative care completely resolved his symptoms. (Tr. pp. 23-24)

After completing conservative treatment, Dr. Gornet recommended a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. (Tr. p. 24) Petitioner testified he wishes to proceed with the recommended surgery because no treatment to date has been able to resolve his symptoms, and he would like to get back to his pre-injury quality of life. (Tr. pp. 24-25)

Petitioner testified his axial neck pain has improved since the initial injuries. (Tr. p. 26) However, it has never completely gone away. *Id.* He experiences neck and nerve pain daily. (Tr. pp. 26-27) Petitioner testified the radiating pain from his neck has improved in its intensity since the work injuries, however, he continues to have symptoms daily. (Tr. p. 27)

Petitioner testified Respondent's Deposition Exhibit 3, page 5 of Respondent's Exhibit 1, shows a pain diagram that accurately reflects his symptoms in the days and weeks following his initial injury. (Tr. p. 30) Petitioner testified Respondent's Deposition Exhibit 3, page 6 of Respondent's Exhibit 1 reflects that, at the time of the IME appointment, he had an aching and burning sensation at the base of the neck, which radiated laterally to the left trapezius muscle and left scapula. (Tr. p. 31) He did not indicate he was experiencing symptoms in his bicep, triceps, or forearms. *Id.* He did indicate he had numbness and tingling in the left-hand palmar region. (Tr. pp. 31-32) Petitioner testified that he continues to have symptoms in his triceps and forearms, however, he did not indicate those symptoms on the pain diagram contained in Respondent's Deposition Exhibit 3, page 6 of Respondent's Exhibit 1, because the instructions stated to only list symptoms he was having "right now". (Tr. p. 32) At the time he was filling out the pain diagram he did not have symptoms in his triceps or forearms. (Tr. pp. 31-33) Petitioner testified he told Dr. Chabot several times that he continued to have intermittent symptoms in his left arm and triceps. (Tr. pp. 33-34). Petitioner testified he told Dr. Chabot he was experiencing numbness and tingling in his left hand at the time of the IME office visit. (Tr. p. 34)

Petitioner testified Respondent's Exhibit 1, Deposition Exhibit 3, page 1, is a pain questionnaire he completed at the IME appointment, which described his symptoms overall since his work injuries. (Tr. pp. 34-35) It documented Petitioner had pain radiating into his legs and arms. His pain initially after the injury was severe. (Tr. pp. 35-36) His pain level was moderate at the time of the IME examination. (Tr. p. 36) The pain was described as sharp, aching, cramping, burning, and electric/shocking. *Id.* Petitioner testified he continues to experience these symptoms, and his pain level remained moderate. (Tr. pp. 36-37) The form also indicated he was having aching, burning and electric/shocking symptoms into his arms and legs, with numbness in the left arm and left leg. (Tr. p. 37) He was not experiencing weakness in his arms or legs. (Tr. pp. 34-38) Once again Petitioner reiterated that he continues to have symptoms in his neck and low back as well as pain radiating to his upper and lower extremities that have not resolved since his work injuries. (Tr. p. 37-38)

Petitioner testified that the continued treatment at Multicare Specialists has helped make his symptoms manageable. (Tr. pp. 38-39) Petitioner explained that when he stopped going to Multicare Specialists, after the September 16, 2024, IME appointment, his symptoms were "definitely exacerbated" both in intensity and frequency. (Tr. p. 39) Since restarting treatment at Multicare Specialists, Petitioner's symptoms have been more manageable. (Tr. p. 40)

On cross-examination, Petitioner testified he reviewed Dr. Chabot's IME report. He was disappointed by the report because Dr. Chabot documented that Petitioner's nerve/radiating pain had resolved. (Tr. p. 56) Petitioner testified: "I never once stated that to Dr. Chabot." *Id.*

Jonathan Brooks, DC Medical Records

Petitioner first sought medical treatment at Multicare Specialists, on May 7, 2024. (PX 4 p. 1) His chief complaints were neck pain and low back pain. The history of present illness on that date stated:

The patient is a 56-year-old male who reports to the office today for injury sustained as a firefighter/paramedic in Edwardsville, Illinois. The patient states that on Saturday night, May 4th he was at a structure fire. He was in his full gear and pack. He was putting a 24 foot extension ladder onto a structure. He had to lift and reposition the ladder multiple times due to structure issues on the building. When doing so he felt tightness in the left side of his neck that radiated to his left trap and medial scapular border. He continued to work, however he noticed an increase in tightness. As the day went on and even the next morning he had to take ibuprofen due to soreness and tightness in the left side of his neck. The next day he was working on Sunday, May 5th. There was an unresponsive female. He and two other people were moving her from the bed to the stretcher. He was kneeling on the bed and bending forward in order to get under her head and torso. He then moved her to the cot/stretchers. He felt an increase in soreness again in the left side of his neck that was significantly worse than the night before as well as the pain in the lower left side of the lumbar spine. The pain got worse throughout the day. The pain currently starts at the left side of the neck and radiates to the left shoulder and left arm. He has a burning sensation into the left triceps. His pain in his lumbar spine radiates from the left side of his low back into the left buttock. Currently he rates his pain is 6 out of 10 on the pain scale and his low back pain is 5 out of 10 on the pain scale. (PX 4 p. 1)

Physical examination of the cervical spine revealed reduction in left lateral flexion and left rotation causing increased symptoms to his left triceps area. Cervical compression test was noted to be positive. Cervical distraction was also positive. A slight loss of sensation in the left triceps compared to the right was observed. Mild weakness in the upper left extremity compared to the right was noted. Petitioner's lumbar spine examination revealed a reduced range of motion in flexion and lateral left flexion secondary to lumbar pain. Petitioner had palpable tenderness to the left lumbar spine. His straight leg raise was positive on the left but negative on the right. The diagnosis at that time was cervical disc protrusion, left cervical radiculitis, lumbar disc protrusion, left lumbar radiculitis. (PX 4 p. 2) Dr. Brooks initiated physical therapy. MRI's of the lumbar and cervical spines were ordered. Petitioner was held off work and told to avoid activities that exacerbated his pain. (PX 4 p. 2)

Dr. Gornet Medical Records

Petitioner first saw Dr. Matthew Gornet on June 25, 2024. His chief complaint was neck and low back pain. His neck pain was at the base, predominantly to the left trapezius, left shoulder, left scapula, into the upper arm, and then tingling down into his arm to his ring finger.

His low back pain central to both sides, left greater than right, intermittent tingling to both legs. (PX 1 p. 1) Regarding his work injuries, Dr. Gornet records state:

... his current problem began on or about May 4, 2024. He is a firefighter for the City of Edwardsville. He was moving a large ladder, approximately 24-foot extension ladder, for a house fire. He moved it several times. When he came back to the firehouse, he noticed increased pain in the left trapezius and left shoulder... the next day, he responded to an unresponsive patient. The patient was on the floor and he and several coworkers kneeled and lifted them and rotated to move them to a cot. He developed low back pain as well as left leg symptoms. He went back to the Firehouse and again that night he woke up and had severe pain to the point he could not move. This was particularly in his neck, left shoulder, as well as his low back. This was reported He has essentially been off work since.” (PX 1 p. 1)

Petitioner had treated for five weeks with Dr. Brook but had plateaued. Petitioner’s symptoms were consistent in the neck and low back. His neck was aggravated with reaching, pulling, or lifting. His low back was aggravated with prolonged sitting, bending, or lifting. He had left arm tingling and paresthesia. He had only occasional parathesis in the legs. (PX 1 p. 1)

Petitioner’s physical examination revealed pain in his neck to both sides, to the base, predominantly to the left trapezius, left shoulder, left scapula, into his posterior triceps region, and then tingling down the back of his arm into his forearm and hand. Sensation was decreased at the C7 and C8 dermatomes on the left. X-rays of the cervical spine revealed disc height loss at C5-6 and C6-7. (PX 1 p. 2) X-rays of the lumbar spine reveal air in the disc at L5-S1 and L4-5 with loss of disc height at L3-4, L4-5, and L5-S1. He was stable in flexion and extension. (PX1 at 3)

Dr. Gornet interpretation of the May 10, 2024, lumbar MRI was: “Some loss of disc height and foraminal narrowing at L5-S1 and to a lesser extent at L4-5 and L3-4. On the left side, there appears to be some more acute herniation at L2-3 best seen on image 13 of 23. There is also some mild foraminal narrowing at L5-S1 left.” (PX 1 pp. 3, 9-10)

Dr. Gornet interpretation of the May 10, 2024, cervical MRI was: “proton density views and sagittals reveal structural disc pathology at multiple levels but on the right side particularly at C4-5, C5-6, and C6-7, on the left side what appears to be C4-5, C5-6, C6-7 with a foraminal herniation extruded fragment at C7-T1 left. This is best seen on proton density and T2 foraminal views image 4 of 15 and 5 of 15, and even 6 of 15 also with a component of C6-7.” (PX 1 p. 3, 7-8)

Regarding the cervical spine Dr. Gornet’s working diagnosis was an “aggravation of this pre-existing condition as well as acute disc injury at C6-T1, C6-7.” (PX 1 p. 3) Regarding the lumbar spine, Dr. Gornet felt Petitioner sustained a disc injury at L2-3 and an aggravation of pre-existing disc degeneration particularly at L4-5 and L5-S1. *Id.* Petitioner was referred to Dr. Helen Blake for steroid injections on the left at C6-7, C7 -T1, and left L2-3. Additionally,

Petitioner was given a prescription to complete up to three months of treatment at Multicare Specialists. Petitioner was held off work. *Id.*

Regarding causation, Dr. Gornet stated: “Based on the information I have and from the Multicare Specialists, I do believe his current symptoms, at least in their level of severity, relate to the injury occurring around 5/4/2024.” (PX 1 p. 3)

On August 19, 2024, Petitioner returned to Dr. Gornet's office. He had undergone injections at C7-T1, C6-7, and L2-3. He reported his neck injections had helped substantially, particularly the first injection (at C7-T1). However, his pain had returned. Petitioner continued to have left sided neck symptoms which was affecting his left shoulder and arm all the way to his fingers. Dr. Gornet recommended Petitioner undergo a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. Dr. Gornet noted he would not comment on the lumbar spine, which has a multilevel problem, until “he has crossed over and doing well with his neck” (PX 1 p. 4)

Petitioner saw Dr. Gornet on October 17, 2024. His complaints and physical examination were unchanged. Dr. Gornet continued to recommend a four-level disc replacement at C4-5, C5-6, C6-7, and C7-T1. At this visit, Dr. Gornet reviewed Dr. Micheal Chabot's September 12, 2024, IME report. (PX 1 p. 5)

Before trial, Petitioner last saw Dr. Gornet on January 6, 2025. His physical examination and complaints remained unchanged. Dr. Gornet continued to recommend the four-level disc replacement. Petitioner returned to light duty, per the IME. Physical therapy was continued to help ameliorate Petitioner's symptoms. (PX 1 p. 6)

Dr. Helen Blake Medical Records

Petitioner underwent a Left C7-T1 ILESI with fluoroscopy on July 9, 2024. The pre and post operative diagnosis was left cervical radiculopathy. (PX 2 p.2) Petitioner underwent a left C6-C7 ILESI with fluoroscopy on July 23, 2024. The pre and post operative diagnosis was left cervical radiculopathy. (PX 2 p. 15) He underwent an L2-3 ILESI with fluoroscopy on August 6, 2024. (PX 2 p. 28)

Deposition of Dr. Matthew Gornet

Dr. Matthew Gornet testified via deposition on December 16, 2024. Regarding Petitioner's medical treatment. (PX 3 p. 9) Dr. Gornet testified consistent with his medical records. Dr. Gornet diagnosed Petitioner with an aggravation of pre-existing cervical pathology, as well as an acute disc injury at C6-7 and C7-T1. *Id.* Regarding the lumbar spine, Dr. Gornet diagnosed Petitioner with an aggravation of his pre-existing condition, as well as an acute herniation at L2-3. *Id.*

Dr. Gornet testified his treatment plan is to address Petitioner's cervical spine first and put the lumbar treatment on hold. Specifically, Dr. Gornet stated: “Right now we placed his low back on hold. To me his low back can be more tolerable with injections. The best option for him would be conservative care. If he needs more than that, he would be looking at a combination of fusion/disc replacement in the lumbar spine.” (PX 3 pp. 10-11)

Dr. Gornet testified it is reasonable and necessary to perform a four-level disc replacement, at C4-5, C5-6, C6-7, and C7-T1, to cure and relieve the effects of Petitioner's work-related injury. (PX 3 p. 12) Dr. Gornet testified this surgery was reasonably calculated to return Petitioner to full duty work, at least when taking the cervical spine by itself. (PX 3 p. 25)

Dr. Gornet testified Petitioner should restrict his physical activities to manage his symptoms. The restrictions would help keep Petitioner from needing pre-op narcotics due to increased pain. (PX 3 p. 15)

Dr. Gornet testified Petitioner's "work activity as described aggravated his underlying degenerative condition in both his cervical and lumbar [spine]. [Dr. Gornet also] believe[s] it caused acute disc injury at C6-7 and C7-T1 in his cervical spine and acute disc injury at L2-3 in his lumbar spine." (PX 3 p. 17) Dr. Gornet testified the work activities performed by Petitioner on May 4th and 5th are the "type of mechanism of twisting and lifting a ladder that could easily injure a cervical spine. It has a long sort of lever arm which cause[s] you to use a lot of force in your arms. And finally, obviously bending over, lifting an individual on the floor could easily aggravate or cause an injury to the low back." (PX 3 p. 18)

Dr. Gornet testified that the cervical surgery was intended to address radicular symptoms as well as axial neck pain. (PX 3 at 21)

On cross-examination, Dr. Gornet was asked:

Question: "You would agree with me, Sir, that one of the main reasons for recommending and/or performing surgery to the cervical spine are reported symptoms?" (PX 3 p. 21)

Answer: "Yes, that would be one of the many reasons would be symptomatology that is failing conservative care. Another reason would be the concern for neurologic compromise that would not be reversible. In this situation, I think the latter is of less issue because for the most part his strength has been maintained, and so we are not as worried about loss of strength or spinal cord integrity, but remember, there are different components of the nerve. There are sensation, there's strength, and there's pain and temperature. And so in this situation, if you have chronic pain, even though your strength and sensation is normal, you're not really doing well as a patient. So we have to take care of and factor in all of those but I'm not so worried about compromise neurologically on this patient." (PX 3 pp. 21-22)

Question: "You would agree with me that you can't state with any medical certainty that the symptomology he is reporting is related to all of those levels, correct?"

Answer: "Oh, I disagree, I mean, We do this a lot. So I would say if you want to split out his pain from radicular pain, I believe it's predominantly C5-6, C6-C7, C7-T1, those 3 levels. And if you want to look at axial neck pain and add that in, then C4-5 would also be a component. If you don't have axial neck pain, then you won't treat C4-5. You would just treat C5-6, C6-C7, C7-T1." (PX 3 pp. 22-23)

Question: "I think you testified he really doesn't have any functional deficits at this point?" (PX 3 p. 24)

Answer: "I don't think he has a strength deficit. Even when I first saw him, just a little touch of weakness but nothing overly bad. For the most part he was 5/5." (PX 3 p. 24)

Question: "In this particular case you said your ultimate goal is to get the gentleman back to full duty, and to do so you believe he requires 4 level cervical disc replacement. Do you believe if you do, in fact perform a surgery, there that he is going to get back to full duty?" (PX 3 p. 30)

Answer: "If we were just talking about his neck, absolutely. No question in my mind. What makes this guy complicated is his low back. And so his low back is a much more difficult animal to treat and I'm much more cautious regarding my predictions on that. So in that circumstance, his low back, it may be the better part of valor to have permanent restrictions on his low back and not to do anything more, but from a neck standpoint then the question is well why do surgery at all if you're going to require permanent restrictions. That last office visit I directly asked him is this something that is tolerable for you, can you live with this if I do not do anything and just put you on permanent restrictions, let's say hypothetically, and you can't go back and be a firefighter. He was fairly adamant that he did not want to live like this ongoing for the rest of his life. That's what then tripped us into saying, yes, let's start with the neck." (PX 3 pp. 30-31)

Dr. Gornet testified it was reasonable for Petitioner to continue physical therapy and chiropractic care while awaiting surgical approval. This treatment was designed to keep Petitioner's pain symptoms under control and keep Petitioner from needing narcotics before surgery. (PX 3 p. 38)

Deposition of Dr. Michael Chabot

Dr. Chabot's deposition was taken on February 21, 2025. (RX 1). Dr. Chabot testified that Dr. Gornet recommends surgical intervention in more than 80% of the cases he reviews. (RX 1 p. 8) Dr. Chabot did not believe Petitioner was in any distress during his evaluation. He noted Petitioner took ibuprofens for general aches and pains but no prescription medication. (RX 1 pp. 10-11) Dr. Chabot felt the findings from the cervical and lumbar MRI's were chronic and degenerative in nature. (RX 1 p. 18) Dr. Chabot testified the work injuries caused permanent strains of Petitioner's cervical and lumbar spines. (RX 1 p. 21) Dr. Chabot attributed Petitioner's ongoing symptoms to the May 2024 work injuries. (RX 1 p. 22) Dr. Chabot opined Petitioner did not require additional treatment; reasoning Petitioner was managing his symptoms quite well with over-the-counter medication a couple times a day. Petitioner demonstrated no significant functional deficits. (RX 1 p. 23) When asked whether the proposed cervical surgery was reasonable and necessary, Dr. Chabot stated: "I would say that I would not perform that surgery

based on my examination and the patient's complaints at the time I evaluated him." (RX 1 p. 24) He opined the risks of the surgery proposed by Dr. Gornet far outweigh Petitioner's need for the surgery. *Id.* Dr. Chabot stated with a four-level procedure, you have much higher risk for complications, which include infection, bleeding, death, dysphasia, dysphonia, Horner's syndrome, subsidence, implant failure, and heteropic bone formation that results in later fusion. (RX 1 p. 25) He opined surgery would be performed to address degenerative changes. (RX 1 p. 26)

Dr. Chabot testified Dr. Gornet's "napalm technique where you do every single level that has degeneration" is not what most people do. (RX 1 p. 29) Dr. Chabot opined that Petitioner's symptoms had significantly improved over time. (RX 1 p. 40) Dr. Chabot opined it was not uncommon for a 57-year-old male to have intermittent back or neck complaints not associated with any specific injury given their age and degree of degeneration associated with advancing age. (RX 1 p. 41) He opined Petitioner has much more extensive spine disease than most 57-olds he sees. (RX 1 p. 44). He characterized Petitioner's level of deterioration as extensive and severe. *Id.* Dr. Chabot testified the surveillance video "in no way changed" his opinions in the case. (RX 1 p. 50) Dr. Chabot testified that he believed Petitioner should undergo an FCE. If the FCE showed that Petitioner could not perform the physical demands of a Firefighter/Paramedic, then Petitioner would have to stop being a Firefighter/Paramedic. (RX 1 pp. 50-51)

CONCLUSION OF LAW:

Issue F – Causation:

Based upon the chain of events, the medical records, Petitioner's consistent and credible testimony and the expert opinions of Dr. Gornet and Dr. Chabot, the Arbitrator finds and concludes that Petitioner's current conditions of ill-being, 1) aggravation of pre-existing cervical pathology, as well as an acute disc injury at C6-7 and C7-T1, and 2) aggravation of pre-existing lumbar condition, as well as an acute herniation at L2-3, are causally related to his work accidents of May 4, 2024, and May 5, 2024.

First, by history, prior to the work injuries on May 4, 2024, and May 5, 2024, Petitioner's cervical and lumbar spines were asymptomatic, and he was physically capable of performing the essential functions of a Firefighter/Paramedic. Following his May 2024 work injuries, Petitioner's cervical and lumbar spine have remained symptomatic, and he is physically unable of performing the essential duties of a Firefighter/Paramedic. His symptoms, including radiculopathy into the upper and lower extremities, have waxed and waned in their severity and frequency, but Petitioner credibly testified that he has always had some level of pain since the May 2024 work injuries.

Second, Dr. Gornet creditably testified that Petitioner's complaints and need for treatment were causally related to the work injuries on May 4 and May 5, 2024.

Lastly, Dr. Chabot, the IME doctor, also agreed that Petitioner's work injuries have caused permanent aggravations of his cervical and lumbar conditions.

Issue J - Medical benefits

The Arbitrator finds and concludes that Petitioner's treatment to date has been reasonable, necessary and causally related to his May 4, 2024 and May 5, 2024 work injuries. 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:

- Multicare Specialists: \$58,790.00, and
- MFG Spine L.L.C: \$241.13

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 and concludes that Petitioner is entitled to prospective medical treatment recommended by Dr. Gornet. Therefore, Respondent shall approve and pay for the surgical recommendations outlined by Dr. Gornet. This conclusion is supported by the testimony of Dr. Gornet, Petitioner and Dr. Chabot.

First, Dr. Gornet credibly and persuasively testified that it was reasonable and necessary for Petitioner to undergo a 4-level cervical disc replacement to cure and relieve the symptoms caused by the May 2024 work injuries.

Second, Petitioner credibly testified he continues to suffer from his work injuries and that conservative treatment and activity modification have not adequately ameliorated his symptoms. Petitioner wishes to undergo the proposed cervical surgery in order to improve his quality of life, which is reasonable and persuasive.

Lastly, Dr. Chabot did not testify that it was unreasonable to perform the 4-level disc replacement, Dr. Chabot simply stated he would not do that surgery. Dr. Chabot believes Petitioner should forgo the surgery and instead undergo an FCE. It is clear Dr. Chabot does not dispute that Petitioner continues to suffer from his work injuries and that those continued complaints most likely will prevent him from safely being a Firefighter/Paramedic in the future. Dr. Chabot simply believes Petitioner should live with his continued symptoms, which is not an unreasonable option. However, Petitioner is not required to live with his symptoms when there is a reasonable surgical option to address his complaints. Therefore, Dr. Chabot's opinions are less persuasive than Dr. Gornet's.