ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	02WC066915
Case Name	Leola Harrell v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0275
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Barish
Respondent Attorney	Alyson Szymus

DATE FILED: 10/1/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEOLA HARRELL,

Petitioner,

vs. NO: 02 WC 66915

CITY OF CHICAGO,

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 temporary total disability and permanent partial disability, and being advised of the facts and law, writes to clarify the Decision of the Arbitrator, and otherwise affirms and adopts the Decision, which is attached hereto and made a part hereof.

This matter is before the Commission pursuant to the Order of the Appellate Court dated February 2, 2018 remanding the matter to determine: "(1) compensation for permanent disability, if any and (2) whether the claimant incurred any reasonable and necessary medical expenses after January 17, 2007." In his Decision dated October 23, 2025, the Arbitrator ordered Respondent to pay $53.20 for reasonable and necessary medical expenses and awarded Petitioner 45% loss of use of the person-as-a-whole. The Arbitrator denied Petitioner's request for additional TTD benefits as Petitioner was found to be at MMI on January 17, 2007. Despite the Appellate Court's Remand Order, Petitioner filed her Petition for Review contesting the duration of temporary total disability benefits and the award for permanent partial disability. Specifically, Petitioner argued that her condition has destabilized and she is entitled to additional TTD benefits from January 20, 2012 through October 23, 2025.

It is well recognized that a reviewing court's mandate vests a lower court, or, in this case, the Commission, with jurisdiction only to take action that complies with the reviewing court's

mandate. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28, 976 N.E.2d 447, 364 Ill. Dec. 169. 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.*

While the law-of-the-case doctrine established Petitioner reached MMI as of January 17, 2007, it does not foreclose the possibility that her condition has since destabilized. However, the Commission is bound by the Appellate Court Order limiting this review to the issues noted above. As such, the issue of destabilization and additional TTD benefits is not before the Commission.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 22, 2026 is hereby affirmed and adopted.

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

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

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

OCTOBER 1 2026

/s/ *Christopher A. Harris*
Christopher A. Harris

CAH/tdm
O: 9/24/26
052

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	02WC066915
Case Name	Leola Harrell v. City of Chicago
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Barish
Respondent Attorney	Alyson Szymus

DATE FILED: 1/22/2026

/s/ Jeffrey Huebsch, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 21 2026 3.52%

L. Harrell v. City of Chicago, 02 WC 066915

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Leola Harrell
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **02** WC **066915**

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 **October 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 **12/11/2002**, 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's average weekly wage was $**535.08**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**137,295.40** for TTD, $**0** for TPD, $**0** for maintenance, and $**5,000.00** for other benefits (PPD Advance), for a total credit of $**142,295.40**.

Respondent is entitled to a credit of $**4,837.21** under Section 8(j) of the Act. Per the Parties, this amount has been satisfied.

ORDER

Respondent shall pay reasonable and necessary medical expenses of $53.20, pursuant to the agreement of the Parties, in accordance with Section 8(a) of the Act.

Petitioner's claim for TTD benefits after 1/17/2007 is denied.

Respondent shall pay Petitioner permanent partial disability benefits of $321.05/week for 225 weeks because the injuries sustained caused Petitioner to suffer the 45% loss of use of the person as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 12/2/2002 through 10/23/2025 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

JANUARY 22 2026

INTRODUCTION

The issues in dispute in this case were TTD and the nature and extent of Petitioner's injuries. (ArbX 1). This case is governed by the Law of the Case, as it was the subject of the Workers' Compensation Commission Division of the Appellate Court's Rule 23 Order in Case No. 2018 IL App (1st) 163346WC-U (ArbX 2) and the Workers' Compensation Commission's Decision on Review on Remand in Case No. 15 IWCC 0981 (ArbX 3).

FINDINGS OF FACT

Petitioner testified that she previously testified in this case on May 11, 2022, before Arbitrator Kelmanson. She said that her condition has gotten worse since that hearing. She needs assistance with activities of daily living. (T. 12-13). She continues to see Dr. Anichini, not for active treatment, but just to monitor her condition. She now has a new primary care doctor. (T. 13).

Petitioner testified that she is always in pain. The pain is aggravated by physical activities. She testified that she had difficulty walking to Courtroom 14D in the Daley Center. (T. 14). She has difficulty sleeping. She uses a roller walker. (T. 15). She also uses a cane. (T. 16).

Petitioner testified that she has not had any new accidents since she got hurt in 2002. (T. 18).

PX 1 is records from Loyola.

PX 2 is records from JenCare.

PX 3 is a case summary/medical records review by Dr. Howard Konowitz, dated June 5, 2024. Dr. Konowitz opined that any treatment after the 1/17/2007 MMI date was not reasonable, necessary or related to Petitioner's myofascial pain condition. Petitioner was not in need of further treatment for the work injury. Permanent light duty restrictions restricting heavy lifting and bending were related to the work injury.

PX 4 was described as a claim for reimbursement from the Illinois Department of Public Aid for $53.20. It appears to document a charge for a lumbar x-ray done, 1/16/2015, in the amount of $64.00.Respondent agreed that it was liable for $53.20 on the Request for Hearing form. (ArbX 1).

RX 1 is Respondent's Indemnity payment history.

The Law of the Case, per ArbX 2, is that Petitioner sustained a work accident on December 11, 2005, when she fell down stairs carrying a garbage bag and injured her low back, right arm, and left thigh. Petitioner was diagnosed with musculoskeletal and myofascial pain. Petitioner failed to prove that her carpal tunnel syndrome condition was related to her work injury. Petitioner reached MMI on January 17, 2007, as Dr. Anuchini wrote a letter noting that Petitioner's "condition had stagnated," and that Petitioner had "become more deconditioned." Petitioner had light duty restrictions against heavy lifting and bending. This would preclude Petitioner from returning to her job for Respondent as a custodian.

CONCLUSIONS OF LAW

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

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

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)

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:

Respondent agreed to reimburse IDPA in the amount of $53.20, per the RFH form. (ArbX1. T. 5, 24-25). Respondent shall pay reasonable and necessary medical expenses of $53.20, pursuant to the agreement of the Parties, in accordance with Section 8(a) of the Act.

Regarding Issue K, whether Petitioner is entitled to TTD benefits, the Arbitrator finds:

Petitioner's claim for TTD after January 17, 2007 is denied.

Petitioner was found to be at MMI on January 17, 2007. (ArbX 2). "The employer's obligation to pay workers' compensation benefits continues until the employee's medical condition has stabilized and he has reached maximum medical improvement." Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill. 2d 132, 135-136 (2010). Thus, Petitioner is not entitled to TTD benefits after January 17, 2007, as she was found to be at MMI.

Petitioner claimed TTD from December 11, 2002, through January 17, 2007, and January 20, 2012, through October 23, 2025, a time period of 932-1/7 weeks. Respondent claimed that the correct TTD time period is from December 11, 2002, through January 17, 2007, the date of MMI, a time period of 214-1/7 weeks. (ArbX 1

Respondent's indemnity log indicates that the Petitioner received TTD benefits from December 12, 2002, through January 15, 2010, a time period of 370 2/7 weeks at the TTD rate of $356.72, for a total of $137,295.40. (RX 1). Respondent further paid $5,000.00 permanency advancement. The Respondent paid a total $142,295.40 in indemnity benefits, per the agreement of the Parties. (ArbX 1).

The Arbitrator finds that Respondent is entitled to a credit of $65,906.31. This is $137,295.40 of TTD that was paid minus $76,389.09 in the TTD Petitioner was entitled. This means that there is a credit for TTD paid of $60,906.31. Further, the Respondent provided a $5,000.00 permanency advancement. Thus, Respondent shall be given a credit of $65,906.31 against the PPD award set forth below.

Regarding Issue L, what is the nature and extent of the injuries?, the Arbitrator finds:

Petitioner was diagnosed with musculoskeletal and myofascial pains, being at MMI as of 1/17/2007. She has permanent light duty restrictions, per the Law of the Case and Dr. Konowitz. These light duty restrictions consist of no heavy lifting and bending, which precluded the Petitioner from returning to work as a custodian.

Based on the Record as a whole, the Arbitrator finds that the injuries sustained caused Petitioner to suffer the 45% loss of use of a person as a whole, pursuant to Section 8(d)2 of the Act.

Accordingly, Respondent shall pay Petitioner permanent partial disability benefits of $321.05/week for 225 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC009485
Case Name	Darlene M Davis v. Community Care Systems, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0276
Number of Pages of Decision	7
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Kenneth Bima

DATE FILED: 10/1/2026

DISSENT

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARLENE M DAVIS,

Petitioner,

vs. NO:18 WC 9485

COMMUNITY CARE SYSTEMS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, benefit rates, notice, temporary total disability, and permanent partial disability, and being advised of the facts and the law, reverses the Decision of the Arbitrator and finds that Petitioner, Darlene Davis, failed to prove repetitive trauma injuries to her lumbar spine and left leg which arose out of and in the course of her employment. In so finding, the Commission vacates the Arbitrator's award of permanent partial disability.

FINDINGS OF FACT

Petitioner, a 66-year-old home health aide, claimed repetitive trauma injuries to her lumbar spine and left leg, which manifested on September 17, 2017. By the manifestation date, Petitioner had worked for Respondent for two separate employment periods, the latter being five years. As a home health aide, Petitioner assisted clients with activities of daily living in their home. Her job duties included shopping, cleaning, running errands, transferring, bathing, and taking clients to various appointments.

Petitioner testified her left leg had become very painful. She described it as a "constant charley horse on the upper part of her thigh." Due to this pain, Petitioner woke up one morning and fell to the ground. After the fall, Petitioner presented to Dr. Stiles on September 18, 2017.

Petitioner reported she had "back pain for years, but worse in the past few days." She described left-sided leg pain which radiated down to the knee.

On September 25, 2017, Petitioner underwent an MRI which showed central spinal stenosis, neural foraminal stenosis, and lateral recess stenosis at L3/4 and L4/5; spondylosis with lateral recess and neural foraminal stenosis at L2/3, but sac dimension 11mm above limit for central spinal stenosis; and no central spinal stenosis nor significant neural foraminal stenosis remaining level

On October 10, 2017, Petitioner returned to Dr. Stiles, who noted an abnormal MRI and referred Petitioner to neurology. Dr. Stiles took Petitioner off work.

On October 20, 2017, Petitioner presented to orthopedist Dr. Scott Nyquist with back and left leg pain. Dr. Nyquist noted multiple medical problems including arthritis in the right knee, obesity, and diabetes. He did not recommend surgery but had a long discussion with Petitioner regarding fitness and weight loss.

On December 5, 2017, Petitioner presented to Dr. Gahl with Rockford Pain Center with left thigh and low back pain. Dr. Gahl noted abnormal MRI with L2/3 extrusion, severe neuroforaminal stenosis on the left at L3/4, spondylolisthesis at L4/5, and bad facets. Petitioner reported having some of this pain for the past five years. Dr. Gahl recommended physical therapy and injections. Petitioner underwent multiple left sided ESI injections at L3/4 with decent long term pain relief following each injection.

Petitioner underwent a second MRI on June 26, 2018, which showed grade 1 L4/5 degenerative spondylolisthesis with mild lateral recess stenosis and moderate left-sided L3/4 foraminal stenosis with superimposed foraminal disc herniation of possible subacute duration.

On September 27, 2018, Petitioner presented to Rockford Spine Center and was diagnosed with left L3/4 disc protrusion with foraminal stenosis and improving radiculopathy. On her intake paperwork, Petitioner wrote her injuries were work-related and had been going on for approximately two years. She indicated her leg pain had begun with night leg cramps. There was no indication by the provider about Petitioner's work activities or their relation to her diagnosis. None of the provider's notes mention her employment. Petitioner returned to Rockford Spine Center on a few occasions with continued pain. Petitioner was encouraged to decrease her BMI and strengthen her core muscles. It was noted Petitioner was a possible surgical candidate if her BMI fell below 40.

Dr. Jeffrey Coe, occupational medicine specialist, testified on behalf of Petitioner via evidence deposition on September 6, 2023. Dr. Coe testified he met with Petitioner virtually on June 23, 2022 and subsequently authored a report. Dr. Coe testified consistent with his report and the opinions contained therein. As part of his exam, Dr. Coe reviewed medical records, discussed Petitioner's job duties, and Petitioner's symptoms. Dr. Coe was unaware of any significant previous low back pain. Dr. Coe also reviewed Petitioner's MRI reports, but not the images. Dr. Coe diagnosed Petitioner with chronic lumbar discogenic pain and left lumbar radiculopathy, causally related to the work accident. He testified that Petitioner had asymptomatic lumbar

degenerative disc disease and arthritis which was aggravated by her job duties as a caregiver. Dr. Coe opined Petitioner would need sedentary restrictions and ongoing pain management.

Dr. Andrew Zelby, neurosurgeon, testified on behalf of Respondent via evidence deposition on October 23, 2023. Petitioner reported an onset of cramping along her left thigh approximately one year before her severe low back pain began. Petitioner could not pinpoint an exact cause but suspected it was from her work activities. Petitioner reported urinary incontinence, and several falls in the past few years due to blood sugar issues. Dr. Zelby reviewed medical records and MRI reports/images. He diagnosed Petitioner with lumbar degeneration and disc disease unrelated to her work activities. The basis being Petitioner did not report a specific incident or injury, and her lumbar conditions were not conditions of repetitive trauma. Dr. Zelby testified that Petitioner's symptoms were the natural manifestations of a degeneration condition. Regarding treatment, Dr. Zelby felt Petitioner's injections were excessive. He did not agree with surgery and did not believe Petitioner required work restrictions.

Petitioner testified she had previous low back pain for several years but had always treated it with chiropractic care. She had never undergone injections or more invasive treatment. Petitioner described the current pain in her leg and back as different than her previous pain. Petitioner had not returned to work since her appointment on September 18, 2017. Petitioner was diagnosed with diabetes, obesity, and severe arthritis in her right knee. She could not undergo right knee surgery because of her weight. Petitioner testified she required assistance with activities of daily living.

The Arbitrator found Petitioner successfully proved repetitive trauma injuries to her lumbar spine and left leg, which arose out of and in the course of her employment. The Arbitrator awarded permanent partial disability. Both parties appealed. Respondent seeks reversal of the Arbitrator's accident and causation finding. The Commission agrees with Respondent and reverses same.

CONCLUSIONS OF LAW

The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n,* 291 Ill. App. 3d 734, 740 (4th Dist. 1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Indus. Comm'n,* 51 Ill. 2d 533, 536-37 (1972).

The Commission views the evidence differently than the Arbitrator and finds Petitioner failed to establish repetitive trauma injuries and causal connection.

A claimant seeking benefits under a repetitive trauma theory must meet the same burden of proof as a claimant alleging a single, accidental injury. *Peoria County Belwood Nursing Home v. Industrial Com.*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987). Moreover, even though a repetitive trauma is not traceable to a specific time, place, or cause, it is still essential that a claimant establish a specific date on which the injury is deemed to have occurred. *Three "D" Discount Store v. Indus. Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 144 Ill. Dec. 794 (1989).

To prevail under a repetitive trauma theory, a claimant must establish that his work duties were sufficiently repetitive in nature, occurrence, and force so as to cause a gradual breakdown of the claimant's physical condition. *Williams v. Industrial Comm'n,* 244 Ill. App. 3d 204, 211, 614 N.E.2d 177, 185 Ill. Dec. 43 (1993). Whether a claimant has established his entitlement to benefits under a repetitive trauma theory is a question of fact for the Commission to determine, and its decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Three "D" Discount Store*, 198 Ill App. 3d at 47.

Petitioner alleges she suffered repetitive trauma injuries to her lumbar spine and left leg, which manifested on September 17, 2017. However, the Commission finds Petitioner provided no specific or detailed information concerning her work activities, including the frequency, duration, or manner in which she performed them. Moreover, she failed to specify which of those activities caused or contributed to her lumbar and left leg pain. As a general sub trainer, Petitioner testified she covered several counties and performed different jobs for different clients daily. When asked how often she bathed clients or transferred them out of their wheelchair, she testified "well, quite often." However, she did not provide any parameters for how often she lifted or bathed a client, nor did she specifically relate that activity to her lumbar or left leg pain. Under cross-examination, when asked how often she bathed and showered clients, she contradicted her previous testimony and responded, "not often, only if their insurance and the State dropped them." On further cross examination, Petitioner again confirmed her job consisted of many different activities depending on the day and on the participant. In addition to Petitioner's trial testimony, a copy of her job description was introduced at trial. Although the job description lists her various job duties, it does not specify the frequency or duration she performs those duties. In short, we find Petitioner failed to show with any specificity the work activities which contributed to her lumbar/left leg conditions and failed to show the frequency/duration she performed any of her work activities.

Regarding causation, we find Petitioner failed to prove her lumbar and left leg conditions were related to her work activities. An injury or condition that is caused by repetitive job-related stresses on the employee's body is generally covered under workers' compensation. *Interlake Steel, Inc. v. Industrial Comm'n*, 130 Ill. App. 3d 269, 474 N.E.2d 402 (1st Dist. 1985). However, the injury or condition must be work-related and not attributed to the normal degenerative aging process. *Peoria County Belwood,* 115 Ill. 2d at 524. Petitioner testified and the medical records show she had been experiencing left leg pain for at least a year and up to five years before the alleged manifestation date. Her medical records show her leg pain began and was more significant at night when she was asleep. She described her pain as a "constant charley horse," that caused her to fall one morning while getting out bed. She testified it was this fall that motivated her visit to her primary care provider on September 18, 2017. There was no evidence she fell at work. She did not report her work activities or her belief her work activities were causing her symptoms to her primary care provider. On Petitioner's short-term disability form, her primary care provider expressly indicated her symptoms and conditions were unrelated to her work activities. Petitioner was subsequently referred by her primary care provider to pain management and orthopedics based on her lumbar MRI, however, none of those providers related her conditions to her work activities. In fact, only her pain management provider, Dr. Gaul, had any knowledge of her work activities, and he did not relate her conditions to those activities.

The Commission also finds Petitioner's claim of a repetitive trauma injury lacked supporting medical opinion testimony. It was undisputed that Petitioner suffered from lumbar degenerative disc disease and arthritis, uncontrolled diabetes, and obesity, which was diagnosed by her treating providers. In addition to her treating providers, Petitioner was also evaluated by two experts, Dr. Jeffery Coe and Dr. Andrew Zelby. We are not persuaded by the opinions of Dr. Coe. It was Dr. Coe's belief that Petitioner regularly assisted visiting nurses in bathing and transferring patients, which required forceful exertion and twisting, ultimately aggravating Petitioner's lumbar degenerative disc disease and arthritis. First, Dr. Coe's description of Petitioner's job duties, as stated above, was not supported by the record, as there is no evidence to what extent Petitioner regularly assisted in bathing, showering, or transferring patients. Second, we find Dr. Coe's opinion less credible because he never examined Petitioner. Third, Dr. Coe was not provided any pre-existing medical records/diagnostic images and had no knowledge of Petitioner's pre-existing lumbar symptoms. Finally, although Dr. Coe was board certified in occupational medicine, he did not specialize in orthopedics or neurology. Overall, we find Dr. Coe lacked sufficient knowledge of Petitioner's job duties and he conducted a perfunctory exam. We are more persuaded by the opinions of Petitioner's treating providers and Dr. Zelby, who opined Petitioner's symptoms were a natural progression of her degenerative lumbar condition and were unrelated to her work activities. We further find Petitioner's treating providers and Dr Zelby had a more comprehensive view of Petitioner's medical condition upon which to base their opinions.

In conclusion, we find Petitioner failed to prove repetitive job duties and failed to prove her current lumbar/left leg condition was related to her job duties. Petitioner was advanced age, had undisputed degeneration and arthritis in her lumbar spine, and had several comorbidities. None of Petitioner's treating providers related her medical condition to her job duties, and we are not persuaded by Dr. Coe's opinion. Therefore, we reverse the Arbitrator's finding on accident and causal connection. All remaining issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on September 8, 2025 is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION the Arbitrator's award of $220.00/week for a period of 25 weeks, as provided in Section 8(d)(2) of the Act, because the injuries sustained caused 5% loss of a person as a whole, is hereby vacated.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 1 2026

/s/ *Maria E. Portela*
Maria E. Portela

o: 8/20/26
MP/ns
068

/s/ *Christopher A. Harris*
Christopher A. Harris

DISSENT

I respectfully dissent from the decision of the Majority. I would have affirmed and adopted the well-reasoned decision of the Arbitrator.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005342
Case Name	Jose Garcia v. Will County Sheriff's Office
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0277
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Smart
Respondent Attorney	Lauren Kus

DATE FILED: 10/1/2026

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jose Garcia,

Petitioner,

vs. No. 24 WC 5342

Will County Sheriff's Office,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, 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, a 31-year-old Correctional Officer, testified that while trying to restrain an aggressive inmate on June 26, 2023, he injured his right shoulder and both knees when he fell onto the concrete floor. He was seen that day at Silver Cross Hospital's emergency room, where he complained of pain in his right upper arm and both knees. X-rays were taken of his right shoulder, right humerus, and bilateral knees, and showed no fractures or dislocations. The hospital's differential diagnosis was, "knee pain, fracture, sprain, strain." Petitioner was discharged after being given a referral to orthopedics.

On July 3, 2023, Petitioner followed up with Dr. Jourdan Cancienne of Midwest Orthopaedics at Rush. Then, he reported mild but improving anterior knee pain, which he did not believe would prevent him from working full duty. Further x-rays of his right shoulder and knees that day showed no abnormalities. Dr. Cancienne diagnosed Petitioner with a right shoulder strain and bilateral knee contusions which were, "expectedly improving and resolving with time." Dr.

Cancienne found no significant structural damage that would require further intervention, and he released Petitioner to work without restriction. He also informed Petitioner that if he was unable to work without restriction, he could return and request physical therapy. Petitioner did return to his prior job, and sought no further medical treatment or physical therapy for his injuries after July 3, 2023.

The Arbitrator found Petitioner proved, under a chain of events analysis, that his June 26, 2023 accident caused a right shoulder strain and bilateral knee contusions. The Arbitrator awarded Petitioner 9.3 weeks of permanent partial disability, representing 1% loss of each leg under §8(e), and 1% loss of person as a whole under §8(d)2.

The Commission views the evidence somewhat differently than the Arbitrator, and vacates the §8(d)2 award for Petitioner's right shoulder injury. While Petitioner did sustain a minor shoulder strain, Dr. Cancienne's records dated July 3, 2023, just one week after the accident, documented Petitioner's report that, "his shoulder has recovered fully." Dr. Cancienne released Petitioner to full duty work at that time, and Petitioner sought no further treatment after that date.

The parties stipulated that following this accident, Petitioner missed only one week of work, during which he was paid his full salary. At arbitration, Petitioner was asked if he had any current issues with the body parts he injured in this accident. He answered, "My knees primarily. It's not enough [of an issue] to seek physical therapy or anything for, but they are more susceptible to or prone I would say to injury or soreness or swelling." At arbitration, Petitioner expressed no existing complaints or issues with his right shoulder.

Based on Dr. Cancienne's records and Petitioner's own testimony, we find Petitioner did not prove he sustained any permanent partial disability to his right upper arm or shoulder. Accordingly, we vacate the Arbitrator's award of 1% loss of person as a whole under §8(d)2 for that injury.

The Commission also corrects a typographical error in the Arbitration Decision. On page 2 of that Decision under "Findings," the Arbitrator reported the date of injury in this case as being, "June 10, 2019." The correct date of accident for this claim is June 26, 2023, and we now make that correction. All else in the Arbitrator's Decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 18, 2026, is hereby modified as stated herein, and otherwise affirmed and adopted.

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

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

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

OCTOBER 1 2026

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-09/24/26
068

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005342
Case Name	Jose Garcia v. Will County Sheriff's Office
Consolidated Cases	24WC005340
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Matthew Smart
Respondent Attorney	Lauren Kus

DATE FILED: 3/18/2026

/s/ Paul Cellini, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 17 2026 3.57%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSE GARCIA
Employee/Petitioner
v.
WILL COUNTY SHERIFF'S DEPARTMENT
Employer/Respondent

Case # **24** WC **05342**

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 **Joliet**, on **February 3, 2026**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 10, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**85,682.80**; the average weekly wage was $**1,400.00**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits.

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

ORDER

The Arbitrator finds that the Petitioner's bilateral knee contusion and right shoulder strain injuries are causally related to the June 26, 2023 work accident.

Respondent shall pay Petitioner permanent partial disability benefits of $840.00 per week for 2.15 weeks, because the injuries sustained caused the loss of use of 1% of the left leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $840.00 per week for 2.15 weeks, because the injuries sustained caused the loss of use of 1% of the right leg, as provided in Section 8(e) of the Act.

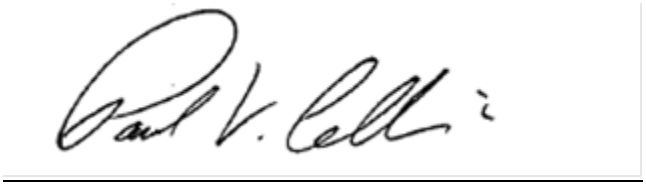
Respondent shall pay Petitioner permanent partial disability benefits of $840.00 per week for 5 weeks, because the right shoulder injuries sustained caused the loss of use of 1% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **June 26, 2023** through **February 3, 2026**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

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



Signature of Arbitrator

MARCH 18 2026

STATEMENT OF FACTS

This matter was tried on 2/3/26 as a consolidated matter with case number 24 WC 5340.

Petitioner testified he works for Respondent as a Correctional Officer. His job involves providing safety and security at the prison facility, checking on inmates, feeding them, and establishing safety. He moves around the jail for most of his shift. On 11/22/22, he was doing a security check and was jumped by an inmate and punched in the face, striking his lower jaw and lip area. He and his co-workers then subdued the inmate. Petitioner testified his lip was cut and bleeding.

Petitioner was sent for treatment at Physician's Immediate Care (PIC), testifying he had jaw swelling. The PIC note indicates complaints of left jaw swelling and pain after being punched in the face with slight lip bleeding. Mild left jaw swelling was noted on exam and a superficial lip abrasion. X-ray indicated no acute fracture. He was advised to return to work and to follow up the next day. (Px1).

Petitioner testified he had a previously scheduled day off on 11/23/22 and then followed up at PIC. He testified his swelling had reduced but he had irregular jaw pain. The report states Petitioner reported his lip was a little sore. but his swelling went down. In the lower left lip there was a "small contusion in the form of a bleb." Petitioner was released from care to return as needed. (Px1).

Petitioner testified he feels like he has a permanent scar inside his lip. He continues to feel mild clicking but did not feel he needed further treatment and has not sought further treatment for this problem.

On 6/26/23, Petitioner had to check a cell with a psychiatric inmate. The inmate was not restrained, and when Petitioner asked him to sit, he attacked Petitioner. He testified he blocked a couple of punches, and there were some kicks, as he tried to get the inmate to the ground to subdue him. After this incident, Petitioner testified he had pain in his right shoulder, and severe pain in both knees from falling onto the floor.

Petitioner went to the Silver Cross Hospital emergency room that same day. The 6/26/23 ER report indicates Petitioner reported bilateral knee and right upper arm pain following an altercation at work. Right shoulder and bilateral knee x-rays were normal. He was diagnosed with bilateral knee and right upper arm pain and was to follow up with orthopedics. (Px2). Petitioner testified he was held off work for a few days. He followed up at Midwest Orthopaedics on 7/3/23, seeing Dr. Cancienne.

Dr. Canienne's 7/3/23 documented Petitioner's report of falling onto his bilateral knees and straining his right tricipital area. He hadn't worked since the injury and reported since the injury his shoulder had fully recovered with mild and improving anterior knee pain. Petitioner did not feel his current pain level would restrict him

from returning to full work duty and he was released to do so. Therapy would be considered if he was unable to do so. (Px3).

Petitioner testified his knee pain was improving by the time of this follow up, but he also noticed some left shoulder pain from the fight and that he overexerted both shoulders wrestling with the inmate. The Arbitrator did not note any left shoulder complaints in the report. Petitioner testified he was diagnosed with knee contusions and a right shoulder strain and was advised to follow up as needed. Petitioner sought no further treatment or any physical therapy after this visit and "just worked through it." As to ongoing symptoms, he testified that primarily his knees are more prone to soreness or swelling.

On cross, Petitioner acknowledged he underwent no physical therapy for either of his work injuries, and he's sought no care since the 11/23/22 visit for the punch injury and since his 7/3/23 visit with Dr. Cancienne.

The parties and the Arbitrator viewed the Petitioner's lip scarring and the Arbitrator noted there was a very small bulb or nodule inside the lip and a very small scar on the lip itself that was almost not visible.

On further questioning by the Arbitrator, Petitioner testified he still has clicking in his jaw when he extends it, but acknowledged he hasn't sought treatment for this or had any surgery recommended.

Petitioner has continued to work his full and regular duties with Respondent. He does sometimes work overtime. He works at only the one facility.

The parties stipulated that Petitioner was forced to work a double shift on 11/27/22 after the 11/22/22 accident. He requested and worked double shifts on 7/7/23 and 7/8/23 following the 6/23/23 incident.

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:

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the 7/26/20 work injury.

Petitioner testified that he was attacked by a psychiatric inmate and injured his right shoulder in the struggle and his bilateral knees when he went to the floor subduing the inmate. The medical records support these complaints. The chain of events supports a causal relationship between Petitioner's diagnosed right shoulder strain and bilateral knee contusions given no indication of prior similar symptoms and a credible and consistent history of injury from Petitioner. It should be acknowledged that the Petitioner had only two medical visits and one week off work following this injury before returning to regular work duty. Petitioner acknowledged he has sought no further treatment after 7/3/23. The Arbitrator finds by the preponderance of the evidence that the Petitioner's right shoulder strain and bilateral knee contusion conditions of ill-being are causally related to the work injury.

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 that the parties did not list TTD benefits as an issue in dispute, the Arbitrator notes they have stipulated that the Petitioner was entitled to TTD from 6/26/23 through 7/3/23, and that the Respondent is entitled to full credit as Petitioner continued to be paid his regular salary during this time period.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

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

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

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

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that that the record reveals that Petitioner was employed as a Correctional Officer at the time of the accident and has returned to work in his prior capacity with no lost time and no apparent significant impact related to the work accident. This factor carries some weight in the permanency determination and tends to show a lower level of permanency.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 31 years old at the time of the accident. No evidence was presented which would tend to show how the Petitioner's age may impact any permanency resulting from the accident, and this factor carries no real weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner returned to regular duty with no significant lost time, and no evidence was presented that would indicate the Petitioner's earning capacity was impacted by the work accident. This factor carries some weight in the permanency determination and tends to show a lesser level of permanency.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner presented to the emergency room following this assault and complained of pain in his right shoulder and bilateral knees. He remained off work until seeing orthopedic physician Dr Cancienne on 7/3/23. The orthopedic doctor diagnosed a sprain in the shoulder and contusions to both knees and released Petitioner to return to regular work. Petitioner reported his shoulder had fully recovered with mild and

improving anterior knee pain and was ready to return to work. He was advised if he continued to have problems he could return for referral to physical therapy. Petitioner testified he has not sought treatment since that time. His indication of left shoulder complaints at the time of the injury are not corroborated by the contemporaneous medical records. The Arbitrator finds that this factor carries the most significant weight in the permanency determination.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries and similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 1% of the person as whole pursuant to §8(d)2 of the Act relative to the right shoulder injury, and the loss of use of 1% of the left leg and 1% of the right leg pursuant to §8(e) of the Act relative to the bilateral knee contusions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027543
Case Name	Jamie Rusch v. Bluelinx Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0278
Number of Pages of Decision	21
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	James Marszalek
Respondent Attorney	Kyle Carlson

DATE FILED: 10/2/2026

/s/Frank Soto, Commissioner

Signature

26IWCC0278

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMIE RUSCH,

Petitioner,

vs. NO: 21 WC 27543

BLUELINX CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability benefits, and prospective care, modifies the Decision of the Arbitrator to award temporary total disability benefits from September 28, 2021 through December 10, 2025 for the reasons stated herein. In all other respects, the Commission affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission hereby incorporates by reference the findings of fact contained in the Decision of the Arbitrator. However, following a careful review of the entire record, the Commission modifies the start date of temporary total disability benefits to September 28, 2021. Petitioner, a truck driver, sustained a lumbar injury after being struck by a John Deere Gator driven by his supervisor on August 12, 2021. Petitioner testified that following the work accident, he stopped working on September 22, 2021 and had not worked anywhere since. Petitioner also presented to Franciscan Health ER on September 22, 2021 for the purpose of obtaining X-rays; however, no work restrictions were documented at that time. Petitioner was first provided with off-work restrictions on September 28, 2021 by PA David Gilbert of Midwest Anesthesia & Pain Specialists. Petitioner's off-work restrictions were thereafter maintained by his treating doctors through the hearing date of December 10, 2025. Since Petitioner was not given work restrictions by a medical provider until September 28, 2021, the Commission modifies the start date of temporary total disability benefits to September 28, 2021 accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 3, 2026 is modified as stated herein. In all other respects, the

Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $971.64 per week for 219 1/7 weeks, commencing September 28, 2021 through December 10, 2025, as provided in §8(b) of the Illinois Workers' Compensation Act.

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

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

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

OCTOBER 2 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 8/19/26
FJS/mek
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027543
Case Name	Jamie Rusch v. Bluelinx Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	James Marszalek
Respondent Attorney	Kyle Carlson

DATE FILED: 2/3/2026

/s/William McLaughlin, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 3 2026 3.53%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jamie Rusch
Employee/Petitioner

v.

Bluelinx Corporation
Employer/Respondent

Case # **21** WC **27543**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Joliet**, on **12/10/2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/12/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**75,787.40**; the average weekly wage was $**1,457.45**.

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

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services of $**176,841.28**, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**971.64**/week for **220 1/7** weeks, commencing **9/22/2021** through **12/10/2025**, 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.



Signature of Arbitrator

FEBRUARY 3 2026

ICArbDec19(b)

FACTS

This matter was tried before Arbitrator William Mclaughlin Joliet on December 10th, 2025. Jamie Rusch (hereinafter "Petitioner) testified on his own behalf. BlueLinx Corp. (hereinafter "Respondent"), had two witnesses testify.

Testimony of Petitioner, Jamie Rusch

The Petitioner, Jamie Rusch testified that he began working for the Respondent, BlueLinx Corporation, as a truck driver, on June 21st, 2019. BlueLinx Corporation is a supplier of construction-related products. (Tr. 10).

His job duties involved the delivery of construction-related products to customers. In addition, he would have to lift or carry small boxes. Petitioners' duties required him to climb up onto the catwalk of his truck to hook up air and electric lines to the trailer. During inspections he would get underneath the truck and check the coupling device, brakes and tires. (Tr. 11-12).

On August 12th, 2021, Petitioner began working at 6:00 a.m. at the BlueLinx facility in University Park, Illinois. Petitioner testified his back was feeling okay with no discomfort when he started work. (Tr. 12-13).

While Petitioner was discussing a missing order with a forklift operator, co-employee, Mike Lively pulled up to them in a Gator. Mr. Lively was the plant supervisor. Petitioner described the Gator, as an off-road vehicle similar to, "a heavy-duty golf cart." It is an electric vehicle. (Tr. 13-14).

Mr. Lively told the Petitioner to get his driver's license so an electric log on his truck could be set up. Petitioner testified that while he began walking back to the cab of his truck to retrieve his license, he heard a noise and was struck by the Gator going in reverse. Petitioner testified that the left rear of the Gator struck the front of Petitioner's body on the left. Petitioner testified he grabbed the rear of the Gator and, yelled at Mike to stop. Petitioner testified that he was carried approximately 20 to 25 feet before the Gator stopped. (Tr. 14-17).

Petitioner testified that immediately notice any injury until the next morning when he was a little stiff. (Tr. 17).

Petitioner testified that after the Gator stopped Petitioner asked Lively what was on his mind to which Lively did not respond. (Tr. 18).

Petitioner testified that there was a person in the vicinity, named Chuck. who asked Petitioner what the yelling and screaming was about. Petitioner told Chuck, "Mike almost ran me over." (Tr. 19).

The Petitioner continued to work the rest of the day until September 21, 2021. Approximately a week after the accident, Petitioner he told Lively they needed to start paperwork for a claim, and that he needed to see a doctor regarding his back. (Tr. 19-20).

Petitioner testified at that time his low back pain was tolerable, but steadily increasing. (Tr. 20-21).

Testimony of Michael Lively

Michael Lively testified that he was the operations manager for the Respondent's University Park, Illinois location from August 5th, 2019, through April of 2023. (Tr. 42-43).

On August 12th, 2021, Mr. Lively testified he drove up to the Petitioner and another employee in a Gator. Lively testified that he had a conversation with the Petitioner. When the conversation ended the Petitioner left. Lively was still in the Gator and pushed the accelerator, forgetting it was in reverse and, "nearly hit him." Petitioner said, "You almost (expletive) hit me." (Tr. 44-45).

Lively testified that the Gator does not beep while in reverse nor does it have rear view mirors. He testified that the top speed of the Gator in reverse is approximately 5 miles per hour "maybe." The Gator traveled 30 to 40 feet in reverse. (Tr. 45-49)

Lively testified that on August 12, 2021, he tried to get witness statements from Chuck Eckenroth, who had heard what Mr. Rusch said. (Tr. 45-46).

Lively testified he first heard that the Petitioner, had medical issues was on September 22, 2021, when, Petitioner told the Respondent he had medical issues. Lively Testified that the Petitioner worked full duty from August 12, 2021, through September 21st, 2021. with no performance issues during that time. (Tr. 46-47).

Testimony of Charles Eckenroth

Charles Eckenroth, Jr. to testified that he is a current employee of the Respondent, and his title is material handler. (Tr. 55-56).

Eckenroth testified that on August 12, 2021, he was sitting in the smokers' area. He saw Mike Lively drive the golf cart over by Jamie and after a few minutes later heard Jamie scream out, "You almost (expletive) hit me." He did not see what happened. A minute or two later Lively came back, and he asked Eckenroth what happened. (Tr. 56-58).

Medical Summary

Petitioner presented to Dr. David Cox, a chiropractor, on August 21, 2021, and received a general back alignment. After his second visit with Dr. Cox, he was informed he needed to go to the hospital and get X-rays. (Tr. 21-22).

On September 22, 2021, Petitioner visited Franciscan Health Medical Center in Dyer, Indiana, where he was prescribed medications and referred to Midwest Anesthesia and Pain Medicine (hereinafter MAPS). He

began a course of treatment with MAPS that has continued through the date of the arbitration hearing. (Tr. 22-23).

September 28, 2021, Petitioner had his first visit with MAPS. Petitioner testified that after that office visit, he had an episode of severe back pain at home and asked his wife to call an ambulance. The ambulance transported him to Franciscan Health Center in Dyer where he was admitted into the hospital, where he remained until October 2nd, 2021. (Tr. 23-24).

Petitioner would see MAPS approximately every four weeks. MAPS referred him for physical therapy at ATI and performed a series of injections and a radiofrequency ablation. MAPS have also referred him to surgeons, Dr. Sean Salehi and Dr. Sergey Neckrysh. (Tr. 25-26).

Petitioner was seen by Dr. Zeshan Hyder between May 2, 2024, and September 19, 2024. Dr. Hyder has recommended surgery. The Petitioner wishes to have that surgery, but the surgery has not been approved. (Tr. 26-27).

Medical

August 27, 2021, Petitioner saw Dr. David Cox, DC, for an office visit. It was noted that Petitioner was found to have low back, upper back and "trap" tightness with no cervical radiation, but bilateral hip and back radiation, "with no neuro signs." Treatment consisted of 20 minutes of soft tissue mobilization. (Px1) Dr. Cox's bill, is included as (Px12) which also contains a charge from August 20th, 2021, office visit. in his records.

On September 22, 2021, Petitioner presented at Franciscan Health Dyer Emergency Department. (Px2) He presented with a history of, "low back middle pain radiating down to the left foot after getting hit with a Gator UTV." He saw Dr. Bryan Swanson, D.O., who recorded the following history in relevant part:

> "Presents to the ER with left lower back pain X times one month after being hit in the back by a Gator while at work one month ago. Patient was walking to his truck when his boss driving in reverse accidentally struck the patient in his back. He presents with a 4 out of 10 left lower back pain

exacerbated by palpation and movement. The patient states that at times he feels pain traveling down the posterior aspect of his left leg to his heel none currently." (Px 2).

Dr. Swanson's findings found the Petitioner to have tenderness of the left lumbar paraspinal area. A CT scan of the lumbar spine was ordered, which demonstrated extensive multilevel degenerative disk disease with neural foraminal encroachment at L5-S1 due to arthritic changes and disk disease. The doctor diagnosed with lower back pain and injury, new that does not require workup. Petitioner was prescribed Flexeril and Naprosyn and advised to follow up with Working Well Munster in two days and his primary care physician as needed. (Px 2).

On September 28, 2021, Petitioner visited Midwest Anesthesia and Pain Specialists (Px3), and was seen by David Gilbert, PA-C, and Adarsh Shukla, M.D. Petitioner completed a Workers' Compensation form, and gave the following history:

"The boss backed a John Deer (sic) Gator into me when I was walking from him."

Petitioner complained of low back pain radiating into both legs with numbness, tingling and weakness. It was noted that the pain affected his sleep. The examination findings included an antalgic gait, lumbar axial pain and spinal tenderness with muscle spine, a positive bilateral straight leg sign and motor deficits with bilateral hip flexion, leg extension and leg flexion. Petitioner was prescribed physical therapy and a lumbar MRI and was taken off work. (Px3).

The same day on September 28, 2021, Petitioner was taken by ambulance to Franciscan Hospital Dyer. The intake history included the following:

"Patient states that he began having back problems after getting hit by a Gator approximately in mid-August and three months following the incident began having worsening low back pain and radiculopathy ..." (Px4).

Petitioner was admitted to the hospital from September 28, 2021, to October 2nd, 2021. A CT scan without contrast demonstrated multiple disk bulges and stenosis at L4-L5. An MRI scan performed on September 29, 2021, included findings of degenerative changes of the lumbar spine with central canal stenosis most notable at L4-L5. The discharge diagnosis included: Back pain, lumbar radiculopathy and central canal

stenosis most notable at L4-L5. He was discharged with instructions to be seen by a pain clinic and prescribed oral medications. (Px4).

The Petitioner received treatment at Midwest Pain Specialists on October 12, 2021, and continued his care there with various physicians and medical professionals through the present time. His last visit of record was on November 11, 2025. That examination findings included: Tenderness of the lumbar spine, a loss of range of motion of the lumbar spine, a positive straight leg raising test on the right, and sensory loss throughout the bilateral lower extremities. He was kept off work throughout the course of care. The treatment included: A lumbar medial branch nerve block at L3-L5 on March 22, 2022; bilateral lumbar medial branch nerve radiofrequency ablation on April 19, 2022; an epidural steroid injection at L5-S1 on August 16, 2022; a right-sided L3-L5 transforaminal epidural steroid injection on December 20th, 2022; a right-sided L3-L5 transforaminal steroid injection on November 14, 2023; and a left-sided L3-L5 transforaminal epidural steroid injection on November 28th, 2023. The Petitioner reported temporary relief of about 60 percent after the injections. He was prescribed Lyrica for nerve pain, Norco for pain and Baclofen for muscle spasms. He was referred to ATI for therapy which attended from August 8, 2021, to October 22, 2021. Petitioner was also referred to neurosurgeons, Dr. Sean Salehi who he saw on May 10h, 2022, and Dr. Sergey Neckrysh who he saw on October 6, 2022. He remains under the care of Midwest Pain and Anesthesia at the time of the arbitration hearing. (Px3).

Petitioner was seen at ATI from October 8th, 2021, to December 22, 2021. (Px5) The December 22, 202,1 discharge summary indicates that Petitioner presented with signs consistent with lumbar pain and radiculopathy with difficulty walking. He was noted upon discharge to have impairments involving range of motion, soft tissue mobility, strength, flexibility, gait, pain, weight bearing, joint mobility, body mechanics and lifting mechanics. The deficits included limitations on standing or sitting for sustained periods.

On May 22, 2022, Petitioner saw Dr. Sean Salehi of Chicago Neurospine Surgery. (Px6) it was noted that Petitioner complained of pain down the right leg to the foot and at times to the left posterior thigh. His pain was rated a 4 out of 10 but increases to a 7/10 with walking. The physical examination findings included a loss of range of motion of the lumbar spine and slow walking. A review of the September 29, 2021,, MRI scan was interpreted to show significant facet arthropathy at L4-L5 with significant lateral recess stenosis and moderate left-side recess stenosis at L4-L5. There was moderate bilateral facet arthropathy at L3-L4 and L2-L3. (Px 6).

On October 6th, 2022, Petitioner saw Dr. Sergey Neckrysh of University Spine Surgeons. (Px7) The doctor recorded the following history of the accident:

> "Mr. Rusch is a 60-year-old gentleman who was injured at work on August 30, 2021. The patient was hit by a boom of a J.D. Gator geared for about 20 feet, as he clenched to the machine. As a result of the impact, the patient developed low back pain, for which he underwent physical therapy for three months and several rounds of lumbar injections; two of them were epidural injections. The patient states that physical therapy and injections did not help him, and he was referred for a neurosurgical evaluation." (Px 7, p.1).

Dr. Neckrysh noted that Petitioner presented with classical mechanical back pain with excruciating pain with walking, and symptoms of neurogenic claudication with severe lumbar spondylitic radiculopathy in the L4-L5 dermatomal distribution. (Px7, p.1).

The doctor reviewed CT and MRI scans from September 28, 2021, and September 29, 2021, and noted an anterior listhesis of L4 with disruption of the L4-L5 facet joints was present with significant central canal stenosis. The films also demonstrated arthritic facets causing severe lateral foraminal stenosis. He noted Petitioner had instability at the L4-L5 level with anterior listhesis at L4 and L5 with significant arthritic changes within the facet joints. (Px7, p.3). Dr. Neckrysh recommended an L4-L5 decompression and fusion. (Px7, p.3).

From May 2, 2024, to September 19, 2024, Petitioner was seen by Zeshran Hyder, D.O., from Northwest Indiana Spine Institute. (Px8), and had complaints complained of back pain and weakness. The doctor noted a loss of strength in the left leg. He diagnosed lumbar radiculopathy and ordered an MRI scan which was performed on May 30th, 2024. (Px8) The MRI demonstrated degenerative disk disease with a disk bulge indenting the thecal sac at L2-L3. The L3-L4 disk was desiccated with a broad-based disk bulge. A disk bulge was present at L4-L5 with bilateral neural foraminal stenosis. (Px8)

On June 18th, 2024, Dr. Hyder noted Petitioner's symptoms were coming from the L4-L5 level which should be addressed with decompression and stabilization. The L2-L3 and L3-L4 levels would be treated conservatively. Petitioner returned to Dr. Hyder on September 19th, 2024, who noted Petitioner had diminishing strength and was starting to develop saddle anesthesia. He ordered an MRI of the lumbar spine

stat. The MRI demonstrated disk space narrowing at L3-L4 posteriorly and misalignment at L2-L3 and L4-L5 with instability at L2-L3. There was also facet arthropathy at the mid and lower lumbar spine. (Px9).

Dr. Hyder again recommended a decompression at the L4-L5 level. He felt that Petitioner's weakness was coming from the L4-L5 level with quadriceps and tibialis anterior weakness. The doctor felt there was no reason for the insurance carrier to deny the surgery. (Px8).

Petitioner was examined at the Respondent's request pursuant, to Section 12 of the Workers' Compensation Act by Dr. Harel Deutsch of Rush University Medical Center on October 24th, 2022. (Rx2). Dr. Deutsch felt that Petitioner had mild degenerative changes of the lumbar spine and chronic lower back pain. He concluded there was no work injury documented on August 12th, 2021, and therefore there was no aggravation or exacerbation of any condition. He also felt Petitioner did not seek medical attention until six weeks after the alleged accident and therefore none of his medical treatment is related. He stated the Petitioner is not a surgical candidate because of his morbid obesity, poorly controlled diabetes and chronic leg cellulitis. (Rx2).

Prior medical history

Before the accident Petitioner saw his chiropractor, Dr. Cox, for six years every three to five months for an adjustment. (Tr. 35-37).

On January 24th, 2020, Petitioner reported low back pain to the Franciscan Emergency Department, (Tr. 37).

Petitioner's Exhibit No. 10 are records of an admission to Franciscan Hospital from the January 26, 2020, to January 30, 2020. The Petitioner had symptoms of fever, body aches and general weakness. He was diagnosed with left lower extremity skin and soft tissue infections due to venous insufficiency. The January 26, 2020, consultation report by Dr. Matthew Myer, noted that Petitioner had mild pain to palpation of the lumbar spine in the paraspinal region. On January 29th, 2020, physician's progress note reveals the musculoskeletal examination on that date demonstrated no joint tenderness, deformity or swelling.

Records from Petitioner's primary care physician Dr. Bruna Arrunategui-Rodriguez were offered into evidence. All the office notes in evidence for the period February 11th, 2020, through September 23rd, 2020, indicate Petitioner's back has a normal curvature with no tenderness. No complaints of back pain are present. (Px11).

Conclusions of Law

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

(C) Whether Petitioner sustained an accidental injury that arose out of and in the course of employment:

Arbitrator finds that the Petitioner suffered an accidental injury on August 1212, 2021, that arose out of and in the course of Petitioner's employment with the Respondent. Arbitrator finds that the Petitioner has met his burden of proof. In reaching said conclusion Arbitrator relied on the Petitioners credible testimony as well as the medical records entered into evidence and , and opinions of Dr. Salehi and Dr. Hyder.

In deciding the issue of whether or not the Gator driven in reverse actually came in contact with the Petitioner causing his injury the Arbitrator notes facts supporting his claim.

It is undisputed that the Petitioner and Lively had a conversation after which Lively accidentally drove the Gator in reverse. (Tr. 44, 49).

Lively testified that Gator did not have a reverse beep warning sound or rearview mirrors. (Tr. 48).

Arbitrator believes that as a result of being behind the gator when it went in reverse, the petitioner was struck by said gator. In addition, Arbitrator notes that there were no eyewitnesses who saw the accident. Lively was unsure and seemed evasive with his testimony regarding whether he could have struck the Petitioner and the only other person who testified was Eckenroth, who testified all he noticed was the Petitioner yelling soon after the gator went in reverse. (Tr. 49, 56-58).

The Arbitrator further notes that the medical histories support Petitioner's testimony that he was hit by the Gator. The Petitioner first sought treatment with his chiropractor, Dr. David Cox.

The Petitioner next sought treatment at Franciscan Health in Dyer Emergency Department on September 22,, 2021 and contains a detailed history of being hit by a Gator at work. (Px2).

On September 24, 2021, Petitioner completed a Workers' Compensation questionnaire at MAPS and recited a history that his boss backed into him with a Gator. (Px3.)

On September 28th, 2021, Petitioner was seen for the first time at MAPS and again recites a history that his boss backed him into with a Gator. (Px3).

Again, on September 28, 2021, Petitioner was seen in the emergency department of Franciscan Hospital, Dyer. The Petitioner presented with a history that he began having back problems after getting hit with a Gator approximately in mid-August. (Px4).

The Arbitrator observed the Petitioner testify and finds that he was credible in his rendition of the facts.

After considering the testimony of the Petitioner, the witnesses and the medical records, the Arbitrator finds the Petitioner's testimony to be credible and consistent. The Arbitrator finds that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on August 12,, 2021.

(F) Is the Petitioner's current condition casually related to the injury:

The Arbitrator finds that a causal connection exists between the condition of ill-being of the Petitioner's lumbar spine and the accident of August 12, 2021. In reaching said conclusion Arbitrator relies on the testimony of the Petitioner, as well as the medical opinions and records. Prior to the accident Petitioner suffered only episodes of minor back pain. After this accident the Petitioner suffered back pain which persisted and increased through the date of the hearing, including radiation to the lower extremities.

On May 10, 2022, Petitioner was seen by a neurosurgeon, Dr. Sean Salehi. The Petitioner reported back pain after he was hit and pulled by a Gator that was operated by his boss. Dr. Salehi diagnosed lumbar spondylosis. Dr. Salehi commented:

> "Mr. Rusch has low back pain as a result of the described work injury. This is likely due to aggravation of a preexisting but asymptomatic facet arthropathy bilaterally at L4-L5 with lower extremity symptoms due to lateral recess stenosis." (Px6).

The Petitioner has been under the care of physicians and other medical professionals at Midwest Anesthesia and Pain from September 28, 2021, through his most recent visit there on November 11, 2025. Petitioner completed a Workers' Compensation questionnaire which lists an August 12th, 2021, date of injury.

The Arbitrator notes that the Petitioner's numerous descriptions of how the accident and injury occurred are consistent throughout his medical records and consistent with his credible his testimony.

In addition, the Arbitrator finds that the opinions of Dr. Salehi and the MAPS credible are consistent with one another. There is a correlation between the onset of Petitioner's development of consistent back pain and the accident.

The Arbitrator finds that at the very least the current injury of August 12, 2021, aggravated a pre-existing injury, as minor as that injury was. To recover in a preexisting condition case, the claimant need only establish a causal connection between his work-related injury and the claimed current condition of ill-being by showing that the injury aggravated or accelerated the preexisting disease." *Sisbro, Inc. vs. Industrial Commission*, 207 IL 2d, 193, 204-206, 797 NE 2d, 665 (2003)).

"It has long been held that an employer takes employees as it finds them." *Sisbro* at 205.

“Even where an employee has a preexisting condition that renders them more vulnerable to an injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was a causative factor." *Sisbro* at 205 (citing *Caterpillar Tractor Company vs. Industrial Commission*, 92 IL 2d 30, 36, 440 NE 2d, 861 (1982)).

"If a claimant is in a certain condition, and an accident occurs and following the accident the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Schroeder vs. Illinois Workers' Compensation Commission*, 207 IL App (4th) 160192 WC.

Arbitrator gives less weight to that of the Section 12 examining physician, Dr. Deutsch, who concluded that no aggravation or exacerbation of any condition occurred because, according to Dr. Deutsch, "there was no work injury on 8/12/21."

Therefore, Arbitrator finds that Petitioner current condition is causally related to the accidental injury suffered on August 21, 2021.

(J) Were the medical services provided reasonable and necessary and had Respondent paid for all reasonable and necessary services:

Having found in favor of the Petitioner regarding accident and causation the Arbitrator finds that the respondent is responsible for all medical bills and services for Petitioner in relation to the accident of August 12, 2021.

The following bills were entered into evidence:

(PX.12) Dr. David Cox, $164
(PX.13) Franciscan Alliance, $18,533.80
(Px 14) APP of Indiana, $1,893

(PX.15) Schererville Fire Department, $758
(PX.16) MAPS Centers for Pain Control, $55,065.80
(PX.17) ADCO Billing Solutions, $23,332.31
(Px 18) Health Care Pharmacy, Inc., $3,118.38
(Px 19) Premier Healthcare Services, $21,585.78
(Px 20) Electronic Waveform Lab, Inc., $4,567.73
(Px 21) IWP, $7,951.16
(Px 22) ATI Physical Therapy, $10,233.03
(PX.23) Chicago Neurospine Surgery, $1,375,
(PX.24) University Spine Surgeons, $3,000
(PX.25) Meijer Pharmacy (circled charges only) $496.58

The medical bills total $176,841.28. The Respondent is to pay the awarded medical expenses to be adjusted pursuant to Section 8(a) and 8.2 of the Workers' Compensation Act.

(K) Prospective medical:

Incorporating the above findings The Arbitrator finds that the Respondent to authorize and pay for a surgical decompression and stabilization at the L4-L5 level and medical and rehabilitative care related to that procedure.

In support of this conclusion, the Arbitrator notes that Petitioner came under the care of Dr. Zeshan Hyder, a spinal surgeon at Northwest Indiana Spine Institute. Petitioner last saw the doctor on September 19, 2024. The doctor noted Petitioner had developed saddle anesthesia and his strength was diminishing. The doctor commented, "He's getting worse." The doctor's clinical exam noted a loss of strength in the lower extremities. Because of the new complaint of saddle anesthesia, the doctor ordered a lumbar MRI scan be performed stat, which was performed at Methodist Hospital Southwest Campus the same date. (Px9)

Dr. Hyder reviewed the MRI and concluded that Petitioner's weakness was coming from the L4-L5 level with quadriceps and tibialis anterior weakness. The prior MRI from May 30, 2024, showed moderate stenosis and lateral recess stenosis at L4-L5 with a 4.8 millimeter spondylolisthesis at L4-L5. X-rays at the time demonstrated a retrolisthesis of 3 millimeters. The doctor commented that the radiology report stated Petitioner

had significant instability with moderate stenosis and lateral recess stenosis at the L4-L5 level. Dr. Hyder's plan on September 19, 2024, was to proceed with decompression and stabilization at the L4-L5 level. (Px8).

Petitioner testified that he wishes to have the surgery but has been unable to schedule it because of a lack of insurance authorization.

Arbitrator relies upon a review of Dr. Hyder's records that Petitioner's condition has worsened since Dr. Deutsch saw the Petitioner. Dr. Hyder notes that he Petitioner's back pain has worsened and clinical findings have now demonstrated a loss of strength of the lower extremities. Conservative measures have provided temporary relief with no long-term benefit.

For the above-stated reasons, the Arbitrator finds that the surgery prescribed by Dr. Hyder on September 19,2024 and September 26th, 2024, is reasonably required to cure or relieve the Petitioner from the effects of the accident.

(L) TTD

The Arbitrator finds that the Petitioner was temporarily and totally disabled for 220 and 1/7 weeks from September 22, 2021, through December 10, 2025. Petitioner has not worked since September 21, 2021. Which is a day before September 22, 2021 when he visited the emergency department of Franciscan Health in Dyer, Indiana. He was diagnosed with a low back injury with back pain and was prescribed medications and advised to follow up with an orthopedic specialist in two to three days. (Px2).

On September 28th, 2021, Dr. Gilbert at Midwest Anesthesia and Pain Specialists recommended that Petitioner remain off work. (Px3).

The same day, September 28, 2021, Petitioner was admitted in the emergency department at Franciscan Hospital in Dyer, Indiana for severe back pain and radiculopathy. Petitioner remained in the hospital until October 2, 2021, with a diagnosis of back pain, lumbar radiculopathy and central canal stenosis most notable at L4-L5. Upon release he was advised to follow up with his primary care physician. (Px4).

From October 12,, 2021, through November 11, 2025, Petitioner was seen monthly by medical professionals at Midwest Anesthesia and Pain. Their findings have included lumbar tenderness, a loss of motion of the lumbar spine, positive straight leg raising tests and motor deficits of the lower extremities bilaterally. Their diagnoses have included low back pain, radiculopathy, spondylosis, inflammatory spondylopathy, neurologic deficits and neuritis. The course of treatment has included physical therapy, surgical consultations, lumbar epidural steroid injections, a radiofrequency ablation, muscle relaxants, pain relievers, and prescriptions for nerve pain. It was noted at every office visit that Petitioner should remain off work due to the nature of the job and the extent of his pain. (Px 3)

Petitioner's last visit before the arbitration hearing was on November 11, 2025. He was again advised to remain off work and return in four weeks. (Px 3)

The Arbitrator further relies on the findings contained in Section (K) of this decision indicating that Petitioner is a candidate for surgical decompression and stabilization of the L4-L5 level.

The Arbitrator finds the opinions of Dr. Deutsch less persuasive as his opinion denied accident and was formulated with a single examination of the Petitioner. In addition to his opinion being inconsistent with the other medical professionals as mentioned above.

The Arbitrator finds that the evidence introduced established that the Petitioner’s condition of ill-being of the lumbar spine prevents him from returning to work and that his condition has not stabilized, worsening and is in need of further medical care.

The Arbitrator finds that Petitioner was disabled from September 22, 2021, through the date of the arbitration hearing on December 10, 2025.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC020372
Case Name	Amber Wilkerson v. United Community Credit Union
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0279
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Matt Brewer
Respondent Attorney	Stephanie Kevil

DATE FILED: 10/2/2026

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMBER WILKERSON,

Petitioner,

vs. NO: 25WC020372

UNITED COMMUNITY CREDIT UNION,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator that Petitioner's accident did not involve any risk distinctly associated with her employment as defined by *McAllister v. Ill. Workers' Comp. Comm'n,* 450 Ill. Dec. 309 (2020) and *Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52 (1989). Moreover, the facts in this case fail to support that this is an unexplained fall which are generally found to be compensable. *See e.g., Chicago Tribune Co. v. IC,* 136 Ill.App.3d 260 (1st Dist. 1985). Instead, the injury involved an issue with Petitioner's sandals which caused her to stumble and fall at work. As noted by the Arbitrator, Petitioner's fall was not the result of tripping on a defect, or falling on uneven or slippery ground at work, and Petitioner's act of walking to the copier to scan documents was also not contributory to her risk of falling. *First Cash Fin. Servs. v. Indus. Comm'n*, 367 Ill. App. 3d 102, 105-06 (2006). (By itself, the act of walking across a floor

at the employer's place of business does not establish a risk arising out of the employment). Furthermore, her choice in footwear was neither mandated by Respondent nor incidental to her job duties of scanning documents. *Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52, 58 (1989). For these reasons, the Commission affirms the Arbitrator's conclusion that Petitioner failed to establish some causal relation between the employment and her injury.

We next correct the following clerical errors:

Caption page: We clarify that this Decision was issued pursuant to §19(b) of the Act.

Page 4, last paragraph: The citation to "*McAllister v. Ill. Workers' Comp. Comm'n*, 181 N.E. 3d 656 at 665, 450 Ill. Dec. 30**4** at 313 (Ill. 2020)" is corrected to read "…450 Ill. Dec. 30**9** at 313."

Page 5, second full paragraph: The citation to *McAllister* is incorrect. We strike "181 N.E. *2*d. at 313" and replace it with "450 Ill. Dec. at 313."

Page 5, last paragraph, last sentence: We correct the citation to "T p. 18" by striking "18" and replacing it with "38, 85-86."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 8, 2026 is hereby affirmed and adopted with the clarifications noted above.

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

IT IS FURTHER ORDERED BY THE COMMISSION 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 for the removal of this cause to the Circuit Court by Respondent is required because no award was made. 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.

OCTOBER 2 2026

/s/ *Maria E. Portela*

MEP/se
O: 9/10/26
49

/s/ *Christopher A. Harris*

DISSENT

I respectfully dissent from the Decision of the Majority. Petitioner was injured while performing a task distinctly associated with her employment. *See McAllister v. Ill. Workers' Comp. Comm'n,* 450 Ill. Dec. 309 (2020). The act of carrying documents to the scanner was an act Petitioner was instructed to perform and one that she would reasonably be expected to perform incident to her assigned duties. *See Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52 (1989). Therefore, I believe petitioner's accident arose out of her employment and is compensable. I would reverse the Arbitrator's Decision and award benefits accordingly.

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC020372
Case Name	Amber Wilkerson v. United Community Credit Union
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph Marciniak, Stephanie Kevil

DATE FILED: 1/8/2026

/s/ Adam Hinrichs, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 6 2026 3.48%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Amber Wilkerson
Employee/Petitioner
v.
United Community Credit Union
Employer/Respondent

Case # **25**WC **020372**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **10/30/2025.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/17/2025**, 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 not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**44,335.20**; the average weekly wage was $**852.60**.

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

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

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

ORDER

Petitioner has failed to prove that she sustained an accident arising out of and in the course of her employment by Respondent. All other issues are rendered moot.

Petitioner's request for benefits under the Act is denied.

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

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



Signature of Arbitrator

JANUARY 8 2026

FINDINGS OF FACT

Amber Wilkerson ("Petitioner") is a mortgage loan processor for United Community Credit Union ("Respondent"). On June 17, 2025, she was working at Respondent's premises when she tripped and fell while walking down a hall. (Transcript "T" p.15). Petitioner testified that there was no defect or object in the area that caused her to fall. (T p. 34). Petitioner testified that she tripped over her own foot, and that it was possible the sandals that she was wearing caused her to fall. (T p. 15-18).

Petitioner testified that at the time she fell she was walking to the copier to scan a document as part of her job duties. (T p. 15). Petitioner testified that she did this about two times per day. (T p. 18). Petitioner would walk about the same distance to use the restroom and would also walk to other parts of the bank including the area designated for the public. (T pp. 38-39, 48). Petitioner testified that the piece of paper she was holding while walking did not contribute to her fall. (T p. 35).

Robert Turek, a consumer loan processor at United Community Credit Union, testified for Respondent that he had observed Wilkerson approaching the copy room. (T p. 77). He recalled her footwear sounded like an open-back sandal or flip-flop. (T p. 82) Mr. Turek saw that when she fell, she was about five to six feet away from him as he sat in his office. (T pp. 78-79). When he went into the hallway to check on her, she told him that she tripped over her shoe. (T p. 78). He did not notice any hazards in the area where Petitioner fell. (T p. 78). Ronnie Nelson, a lending support specialist for Respondent, testified that she was first one to arrive in the copier room did not notice any hazards on the floor. (T p. 91).

Carrie Potter, Respondent's HR representative, testified that part of her job duties is to investigate workplace accidents and determine if there were any hazards that caused the accidents. (T pp. 50-51). She was notified about Petitioner's fall on June 17, 2025, and took witness statements from Ronnie Nelson and Robert Turek that afternoon. (T p. 56). Robert Turek reported that Petitioner said she had tripped over her own foot. (T p. 56; RX1; RX2). Ms. Potter also inspected the copier room and did not find any hazards. (T p. 54; RX3).

Ms. Potter spoke with Petitioner the day after the accident. Based on her investigation, Ms. Potter determined that Petitioner had tripped over her shoe and there were no hazards in the workplace. (T p. 54; RX1). Petitioner did not mention any hazards or defects that caused her to fall, nor did she mention anything about her job duties that caused the fall. (T p. 72; RX1).

Following her fall, Petitioner was picked up by her husband and she went to urgent care. Petitioner presented the same day to Quincy Medical Group (QMG) Orthopedics/Sports Medicine, where she stated that "she tripped on her shoe, twisted her ankle and felt a pop followed by immediate pain." (PX2, p. 1). The medical records reflect "She was wearing a sandal type shoe at the time of the injury and sort of came out of the shoe causing her to turn the ankle." *Id*. During that visit, right ankle X-rays were ordered, an MRI without contrast was scheduled, tramadol was prescribed, and a CAM boot and knee scooter was issued with instructions for non-weightbearing, elevation, and follow-up with orthopedic surgeon Dr. Osaretin Idusuyi after an MRI. *Id*. at 9-10, 34-35.

On June 24, 2025, Dr. Idusuyi's orthopedic evaluation documented a complete Achilles rupture with loss of push-off strength and a nondisplaced medial malleolus fracture on three-view ankle radiographs, and he recommended surgical repair of the right Achilles tendon. *Id*. at 48, 51.

On June 26, 2025, Petitioner underwent right Achilles tendon repair at Blessing Hospital under general anesthesia, with same-day discharge and non-weightbearing instructions. (PX4, p. 50, 63-63, 68).

On July 10, 2025, Petitioner visited the clinic for post-operative pain and follow-up. Her diagnoses included post-operative pain, Achilles tendon rupture, and status post right Achilles tendon reconstruction surgery. Petitioner was prescribed hydrocodone-acetaminophen for pain management and continued her other medications. (PX2 p. 61)

On August 14, 2025, Petitioner had a follow-up visit for her Achilles tendon reconstruction. She continued taking her medications, including atorvastatin, escitalopram, lisinopril, tramadol, hydrocodone-acetaminophen, and silver sulfadiazine cream. (PX2 p. 106)

On August 21, 2025, Petitioner was diagnosed with wound dehiscence, a skin ulcer of the right heel with necrosis of muscle, and surgical wound dehiscence. She was prescribed levofloxacin and doxycycline for infection management, along with her existing medications. (PX2 p. 116)

On August 28, 2025, her diagnoses included wound dehiscence and an infected wound. She continued taking her medications, including hydrocodone-acetaminophen, levofloxacin, lisinopril, and silver sulfadiazine cream. (PX2 p. 126)

On September 10, 2025, Petitioner had an initial consult for a wound infection with Dr. Saad. She continued taking antibiotics and other medications. (PX 2 p. 138) On September 11, 2025, Petitioner had a follow-up visit with Dr. Idusuyi for her infected wound and post-operative pain. Repeat debridement was performed and further cultures were taken. (PX2 p. 153)

On September 22, 2025, Petitioner had a follow-up visit with Dr. Idusuyi. She continued taking atorvastatin, escitalopram, lisinopril, and levofloxacin. She also received a dalbavancin injection for infection management. (PX 2 p. 164) On September 29, 2025, Petitioner had another follow-up visit with Dr. Saad for wound infection and long-term antibiotic use. (PX2 p. 181)

CONCLUSIONS OF LAW

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

In order for a Petitioner to be entitled to worker's compensation benefits, the injury must "arise out of" and occur "in the course of" the claimant's employment. 820 ILCS 305/1(d). Both elements must be present at the time of the injury to justify compensation. *McAllister v. Ill. Workers' Comp. Comm'n*, 181 N.E. 3d 656 at 665, 450 Ill. Dec. 304 at 313 (Ill. 2020). Thus, to be compensated, the Petitioner must prove by a preponderance of the evidence both (1) that the

injury occurred in the course of Petitioner's employment and that (2) that the injury arose out of claimant's employment. *Id*.

The evidence clearly establishes that Petitioner's injury occurred during work hours while Petitioner was at her work location. Thus, the Arbitrator finds that the Petitioner has satisfied one element necessary to prove a work accident, and finds that her injury occurred in the course of her employment by Respondent.

Whether the injury arose out of Petitioner's employment is disputed by Respondent. To satisfy the "arising out of" component, the Petitioner must demonstrate that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *McAllister* at 181 N.E. 2d. at 313. "The mere fact that [Petitioner] was present at the place of injury because of [her] employment duties will not by itself suffice to establish that the injury arose of the employment." *Brady v. Louis Ruffalo & Sons Constr. Co.*, 143 Ill. 2d 542 at 550, 578 N.E.2d 921, at 924. The risks of employment fall within three categories: "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *McAllister at 314.*

Risks distinctly associated with the employment deemed to arise out of employment and are compensable under the act. *Id*. In *McAllister*, the claimant sous-chef, was injured after standing up from kneeling position in the cooler where he was looking for ingredients for a co-worker. The Supreme Court determined that his knee injury arose out of his employment because kneeling and standing to locating ingredients in the cooler were incident to and connected to claimant's duties. *Id*. at 316. Here, Petitioner testified that her job duties included scanning documents. She testified that at the time of her fall she was walking down the hallway to get to the scanner, not scanning documents. (T p. 17). She further testified that the piece of paper that she was carrying did not cause her to fall. (T p. 35). Finally, the record establishes that the hallway where Petitioner walked was in good repair, and there were no hazards present. Therefore, Petitioner's fall did not arise from a risk associated with her employment.

The second category of risks, those personal to the employee, involve nonoccupational diseases, injuries caused by personal infirmities, and injuries caused by persona enemies are generally non-compensable. *Id*. Petitioner testified that her choice in footwear contributed to her fall. In *Purcell v. Ill. Workers' Comp. Comm'n*, 451 Ill. Dec. 786, 184 N.E. 3d 373 (Ill. App. 2021), the claimant, an administrative assistant at the University of Illinois, after turning in her timecard, was injured when she decided to hop over a chain link fence instead of taking the walkway. *Purcell*, 184 N.E. 3d at 376. Her heel was caught in the fence and she fell, injuring her right elbow. *Id*. The Court found that claimant had exposed herself to an unnecessary personal danger for her own convenience and thus, the injury did not arise out of her employment as a non-traveling employee. *Id*. at 379. Here, Petitioner acknowledged that she was wearing sandals without back and that her shoe "did something funky" (T p. 16). By wearing footwear that did not provide stability, she exposed herself to an unnecessary risk solely for her own convenience. Respondent did not prescribe or proscribe sandals. (T p. 18).

The third category of risks are neutral risks without any particular employment or personal characteristics. *McAllister* at 315. Injuries in this category are only compensable under the act where the employee was exposed to the risk to a greater degree than the general public. *Id.* Injuries sustained while walking on a level surface are analyzed as neutral risks. *First Cash Financial Services*, 367 Ill. App. 3d at 105; 853 N.E. 2d 799, 367; (Ill. App. 1st 2006). Here, Petitioner was walking down a hallway without any defects or obstructions. (T p. 34). She testified that the paper she was carrying did not contribute to her fall; instead, she testified that her shoes, sandals, "did something funky" causing her to stumble and fall. (T p. 16).

Given the above, the evidence presented at hearing fails to demonstrate by a preponderance of the evidence that any factors related to Petitioner's employment increased the risk of Petitioner tripping and falling. The Arbitrator finds that Petitioner has failed to meet her burden and prove that she sustained an accident arising out of her employment. All other issues are rendered moot.

Petitioner's request for benefits under the Act is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC020372
Case Name	Amber Wilkerson v. United Community Credit Union
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Corrected Commission Decision
Commission Decision Number	26IWCC0279
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Matt Brewer
Respondent Attorney	Stephanie Kevil

DATE FILED: 10/5/2026

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMBER WILKERSON,

Petitioner,

vs. NO: 25WC020372
26IWCC0279

UNITED COMMUNITY CREDIT UNION,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical treatment, temporary total disability and temporary partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below.

The Commission agrees with the Arbitrator that Petitioner's accident did not involve any risk distinctly associated with her employment as defined by *McAllister v. Ill. Workers' Comp. Comm'n,* 450 Ill. Dec. 309 (2020) and *Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52 (1989). Moreover, the facts in this case fail to support that this is an unexplained fall which are generally found to be compensable. *See e.g., Chicago Tribune Co. v. IC,* 136 Ill.App.3d 260 (1st Dist. 1985). Instead, the injury involved an issue with Petitioner's sandals which caused her to stumble and fall at work. As noted by the Arbitrator, Petitioner's fall was not the result of tripping on a defect, or falling on uneven or slippery ground at work, and Petitioner's act of walking to the copier to scan documents was also not contributory to her risk of falling. *First Cash Fin. Servs. v. Indus. Comm'n*, 367 Ill. App. 3d 102, 105-06 (2006). (By itself, the act of walking across a floor at the employer's place of business does not establish a risk arising out of the employment). Furthermore, her choice in footwear was neither mandated by Respondent nor incidental to her job

duties of scanning documents. *Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52, 58 (1989). For these reasons, the Commission affirms the Arbitrator's conclusion that Petitioner failed to establish some causal relation between the employment and her injury.

We next correct the following clerical errors:

Caption page: We clarify that this Decision was issued pursuant to §19(b) of the Act.

Page 4, last paragraph: The citation to "*McAllister v. Ill. Workers' Comp. Comm'n*, 181 N.E. 3d 656 at 665, 450 Ill. Dec. 30**4** at 313 (Ill. 2020)" is corrected to read "…450 Ill. Dec. 30**9** at 313."

Page 5, second full paragraph: The citation to *McAllister* is incorrect. We strike "181 N.E. *2*d. at 313" and replace it with "450 Ill. Dec. at 313."

Page 5, last paragraph, last sentence: We correct the citation to "T p. 18" by striking "18" and replacing it with "38, 85-86."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 8, 2026 is hereby affirmed and adopted with the clarifications noted above.

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 for the removal of this cause to the Circuit Court by Respondent is required because no award was made. 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.

/s/ *Maria E. Portela*

OCTOBER 5 2026

/s/ *Christopher A. Harris*

MEP/se
O: 9/10/26
49

DISSENT

I respectfully dissent from the Decision of the Majority. Petitioner was injured while performing a task distinctly associated with her employment. *See McAllister v. Ill. Workers'*

Comp. Comm'n, 450 Ill. Dec. 309 (2020). The act of carrying documents to the scanner was an act Petitioner was instructed to perform and one that she would reasonably be expected to perform incident to her assigned duties. *See Caterpillar Tractor Co. v. Indus. Com.*, 129 Ill. 2d 52 (1989). Therefore, I believe petitioner's accident arose out of her employment and is compensable. I would reverse the Arbitrator's Decision and award benefits accordingly.

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC020372
Case Name	Amber Wilkerson v. United Community Credit Union
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph Marciniak, Stephanie Kevil

DATE FILED: 1/8/2026

/s/ Adam Hinrichs, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 6 2026 3.48%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Amber Wilkerson
Employee/Petitioner
v.
United Community Credit Union
Employer/Respondent

Case # **25**WC **020372**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **10/30/2025.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/17/2025**, 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 not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**44,335.20**; the average weekly wage was $**852.60**.

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

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

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

ORDER

Petitioner has failed to prove that she sustained an accident arising out of and in the course of her employment by Respondent. All other issues are rendered moot.

Petitioner's request for benefits under the Act is denied.

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

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



Signature of Arbitrator

JANUARY 8 2026

FINDINGS OF FACT

Amber Wilkerson ("Petitioner") is a mortgage loan processor for United Community Credit Union ("Respondent"). On June 17, 2025, she was working at Respondent's premises when she tripped and fell while walking down a hall. (Transcript "T" p.15). Petitioner testified that there was no defect or object in the area that caused her to fall. (T p. 34). Petitioner testified that she tripped over her own foot, and that it was possible the sandals that she was wearing caused her to fall. (T p. 15-18).

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Ms. Potter spoke with Petitioner the day after the accident. Based on her investigation, Ms. Potter determined that Petitioner had tripped over her shoe and there were no hazards in the workplace. (T p. 54; RX1). Petitioner did not mention any hazards or defects that caused her to fall, nor did she mention anything about her job duties that caused the fall. (T p. 72; RX1).

Following her fall, Petitioner was picked up by her husband and she went to urgent care. Petitioner presented the same day to Quincy Medical Group (QMG) Orthopedics/Sports Medicine, where she stated that "she tripped on her shoe, twisted her ankle and felt a pop followed by immediate pain." (PX2, p. 1). The medical records reflect "She was wearing a sandal type shoe at the time of the injury and sort of came out of the shoe causing her to turn the ankle." *Id*. During that visit, right ankle X-rays were ordered, an MRI without contrast was scheduled, tramadol was prescribed, and a CAM boot and knee scooter was issued with instructions for non-weightbearing, elevation, and follow-up with orthopedic surgeon Dr. Osaretin Idusuyi after an MRI. *Id*. at 9-10, 34-35.

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CONCLUSIONS OF LAW

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

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injury occurred in the course of Petitioner's employment and that (2) that the injury arose out of claimant's employment. *Id*.

The evidence clearly establishes that Petitioner's injury occurred during work hours while Petitioner was at her work location. Thus, the Arbitrator finds that the Petitioner has satisfied one element necessary to prove a work accident, and finds that her injury occurred in the course of her employment by Respondent.

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Risks distinctly associated with the employment deemed to arise out of employment and are compensable under the act. *Id*. In *McAllister*, the claimant sous-chef, was injured after standing up from kneeling position in the cooler where he was looking for ingredients for a co-worker. The Supreme Court determined that his knee injury arose out of his employment because kneeling and standing to locating ingredients in the cooler were incident to and connected to claimant's duties. *Id*. at 316. Here, Petitioner testified that her job duties included scanning documents. She testified that at the time of her fall she was walking down the hallway to get to the scanner, not scanning documents. (T p. 17). She further testified that the piece of paper that she was carrying did not cause her to fall. (T p. 35). Finally, the record establishes that the hallway where Petitioner walked was in good repair, and there were no hazards present. Therefore, Petitioner's fall did not arise from a risk associated with her employment.

The second category of risks, those personal to the employee, involve nonoccupational diseases, injuries caused by personal infirmities, and injuries caused by persona enemies are generally non-compensable. *Id*. Petitioner testified that her choice in footwear contributed to her fall. In *Purcell v. Ill. Workers' Comp. Comm'n*, 451 Ill. Dec. 786, 184 N.E. 3d 373 (Ill. App. 2021), the claimant, an administrative assistant at the University of Illinois, after turning in her timecard, was injured when she decided to hop over a chain link fence instead of taking the walkway. *Purcell*, 184 N.E. 3d at 376. Her heel was caught in the fence and she fell, injuring her right elbow. *Id*. The Court found that claimant had exposed herself to an unnecessary personal danger for her own convenience and thus, the injury did not arise out of her employment as a non-traveling employee. *Id*. at 379. Here, Petitioner acknowledged that she was wearing sandals without back and that her shoe "did something funky" (T p. 16). By wearing footwear that did not provide stability, she exposed herself to an unnecessary risk solely for her own convenience. Respondent did not prescribe or proscribe sandals. (T p. 18).

The third category of risks are neutral risks without any particular employment or personal characteristics. *McAllister* at 315. Injuries in this category are only compensable under the act where the employee was exposed to the risk to a greater degree than the general public. *Id.* Injuries sustained while walking on a level surface are analyzed as neutral risks. *First Cash Financial Services*, 367 Ill. App. 3d at 105; 853 N.E. 2d 799, 367; (Ill. App. 1st 2006). Here, Petitioner was walking down a hallway without any defects or obstructions. (T p. 34). She testified that the paper she was carrying did not contribute to her fall; instead, she testified that her shoes, sandals, "did something funky" causing her to stumble and fall. (T p. 16).

Given the above, the evidence presented at hearing fails to demonstrate by a preponderance of the evidence that any factors related to Petitioner's employment increased the risk of Petitioner tripping and falling. The Arbitrator finds that Petitioner has failed to meet her burden and prove that she sustained an accident arising out of her employment. All other issues are rendered moot.

Petitioner's request for benefits under the Act is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC012231
Case Name	Cindy Hernandez v. Rana Meal Solutions
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0280
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Rosner, Brenton Schmitz
Respondent Attorney	Todd Wegman

DATE FILED: 10/2/2026

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CINDY HERNANDEZ,

Petitioner,

vs. NO: 25WC012231

RANA MEAL SOLUTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and accident, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but corrects a clerical error as outlined below.

In the Findings section, the Decision states, "On this date, Petitioner ***did*** sustain an accident…." We correct this clerical error to reflect that Petitioner "***did not*** sustain an accident…."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 8, 2026 is hereby affirmed and adopted with the correction noted above.

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 for the removal of this cause to the Circuit Court by Respondent is required because no award was made. 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.

OCTOBER 2 2026

/s/ *Maria E. Portela*

MEP/se
O: 9/24/26
49

/s/ *Christopher A. Harris*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC012231
Case Name	Cindy Hernandez v. Rana Meal Solutions
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Brenton Schmitz, Adam Rosner
Respondent Attorney	Todd Wegman

DATE FILED: 4/8/2026

/s/Jennifer Bae, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 7 2026 3.62%

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)

CINDY HERNANDEZ
Employee/Petitioner

v.

RANA MEAL SOLUTIONS
Employer/Respondent

25WC012231

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 **Jennifer E. Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **February 9, 2026** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 25, 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 **$49,920.00** during the 52 weeks prior; the average weekly wage was **$960.00**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **0** dependent children.

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

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

Respondent is entitled to a credit of $**0.00** for medical benefits paid.

ORDER

Petitioner's benefits under the Illinois Workers' Compensation Act are 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.

Jennifer Bae
Signature of Arbitrator

APRIL 8 2026

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

CINDY HERNANDEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 25WC012231
	)	
RANA MEAL SOLUTIONS,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR – 19(b)

I. PROCEDURAL HISTORY

Ms. Cindy Hernandez ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Illinois Workers' Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014).* Petitioner alleged that she sustained an accidental injury on April 25, 2025 while employed by Rana Meal Solutions ("Respondent"). A hearing was held on February 9, 2026 on the following issues: accident, causation, medical bills, and prospective medical care.

Petitioner testified in support of her claim. The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Petitioner's Testimony Regarding Job Duties and Accident

Petitioner testified that she had been employed by Respondent for the past two (2) years. (T. 9) She works at a desk on a computer in the billing department reviewing invoices, billing through JDE, and using excel sheets. (T. 10) She states she works 8 hours a day, 5 days a week, and 40 hours per week on the computer. (T. 10)

Petitioner testified that on April 25, 2025, she clocked out around lunchtime, as she was crossing a street to go to her car, she was struck by a vehicle in the middle of the street. (T. 11) She explained that she works in a factory building in an industrial area with a big room with 2 rows of tables/chairs for workers to sit on. (T. 11) Petitioner further explained that there are no restaurants or public transit around the building. (T. 12) Petitioner testified that the building she works at has a small parking lot that gets filled by 7 am every day. (T. 12) She was told to use the parking lot across the street during orientation. (T. 12, 14) Petitioner testified that her shift was 8 am to 4:30

pm. (T. 12) Petitioner testified that when she arrived at work on April 25, 2025, there was no parking space by her building so she parked across the street which is the warehouse owned by Respondent. (T. 13-14) She explained that every other day, the employees would "talk about parking because everybody complains about parking" (T. 14) There are no street parking. (T. 14)

PX 9A was shown to Petitioner. (T. 14) Petitioner identified PX 9A as a picture of the building and parking lot she parks, taken on February 6, 2026. (T. 14) Petitioner confirmed that PX 9A looked the same or similar to what it looked on April 25, 2026. (T. 15) There is a sign that states "No Parking Any Time" and Petitioner states that it meant that there is no temporary parking there. (T. 15)

PX 9B was shown to Petitioner. (T. 15) Petitioner identified PX 9B as a picture of the entrance of the parking where she works, taken on February 6, 2026. (T. 16) Petitioner confirmed that PX 9B looked the same or similar to what it looked on April 25, 2025. (T. 16) There is a sign that states "No Parking Any Time. (T. 16)

PX 9C was shown to Petitioner. (T. 16) Petitioner identified PX 9C as a picture of a road where she was struck by a car. (T. 17) She placed a circle with her initials in the middle of the road where she was struck by a car. (T. 17) Petitioner confirmed that PX 9C looked the same or similar to what it looked on April 25, 2025. (T. 17) Petitioner testified that there are no crosswalks in the street for her to use to get to the parking lot. (T. 17) In order to cross to the parking lot on the other side, Petitioner stated she walked from parking lot to parking lot on Spitzer Road. (T. 17-18) Petitioner testified that Spitzer Road is a busy road and there was no other way to cross Spitzer Road from the building she worked in on April 25, 2025 to the parking lot where she parked. (T. 18)

PX 9D was shown to Petitioner. (T. 18) Petitioner identified PX 9D as a picture of the Spitzer Road, taken on February 6, 2026. (T. 19) Petitioner confirmed that PX 9D looked the same or similar to what it looked on April 25, 2025. (T. 19)

PX 9E was shown to Petitioner. (T. 20) Petitioner identified PX 9E as an arial map of the Respondent's buildings. (T. 20) Petitioner explained that plant one is where she works and that the warehouse is Respondent's warehouse. Besides Respondent's warehouse, there are two other warehouses. (T. 20) There are no residential area in PX 9E. (T. 21)

PX 9F was shown to Petitioner. (T. 21) Petitioner identified PX 9F as a picture of building B1 where she worked, taken on February 6, 2026. (T. 21) Petitioner confirmed that PX 9F looked the same or similar to what it looked on April 25, 2025. (T. 21) Petitioner testified that she sees a door in PX 9F where her desk is inside. (T. 21) She placed a circle of the door and initial it. (T. 21-22) Petitioner explained that this is the door where she sits by but the door she exits to cross the street for lunch is three windows down to the left. (T. 22)

Petitioner testified that she is not aware of any other parking lots that she can park other than by building one where she works and the warehouse across the street where she parked on April 25, 2025. (T. 22-23)

Petitioner testified that as she was crossing the street to go to lunch, she looked both ways, saw no cars but noticed a red truck in the parking lot. (T. 23) She saw the red truck coming out but was far away. She believed that she was going to be fine and as she was in the middle of the street, the driver of the red truck was speeding and hit her as he was coming out of the parking lot. (T. 23) The driver was taking a left out of the parking lot and attempted to brake but was too late. (T. 24) Petitioner explained that she tried to jump so the driver would not break her legs and fell on top of the truck as she felt the brakes. Her body went forward to the truck's windshield and when the brakes were pressed, and then her body flew backward onto the concrete. (T. 24-25) The truck hit Petitioner's left side that included her left shoulder, her stomach, and her left leg. (T. 25) Petitioner testified that her whole body went backwards, like she was "flying backwards" landing straight back. (T. 25-26)

Petitioner testified that a guy came, she believed he was a worker for Respondent, and told her not to move and he was going to call the ambulance. (T. 26) Petitioner testified that she stayed their laying on the street for an hour waiting for the ambulance to come. (T. 26)

Petitioner testified that she believed the driver of the red truck was an employee of Respondent because he had a badge like hers. (T. 27) She thought that the driver was distracted on his phone when he hit her. (T. 27) An ambulance eventually came and took Petitioner to St. Joseph Medical Center on April 25, 2025. (T. 27)

Petitioner's Testimony Regarding Medical Treatment

Petitioner testified that she underwent several x-rays and CT scans of her body at St. Joseph Medical Center – Emergency Room ("ER"). (T. 27-28) When she first arrived at ER, Petitioner stated that her adrenaline was going fast, they gave her medicine which made her body numb but her body still hurt. (T. 28) Petitioner testified that she injured her left leg, left knee, left shoulder, left elbow, left wrist, left neck, left shoulder blade, and left side back including lower back. (T. 28)

Petitioner testified that on March 5, 2025, she underwent a CT scan of her abdomen due to excessive bleeding during her period. (T. 28)

Petitioner testified that on April 30, 2025, she met with Dr. Shoeb Mohiuddin at Illinois Orthopedic Network and was recommended to undergo physical therapy. (T. 29) She testified that she had physical therapy from April 30, 2025 through October 24, 2025. (T. 29) She confirmed that physical therapy helped her. (T. 29)

Petitioner testified that on May 14, 2025, she followed up with Dr. Mohiuddin and was recommended for MRIs of her cervical spine, lumbar spine, and left shoulder. (T. 29) She underwent these MRIs on May 29, 2025. (T. 30)

Petitioner testified that a month after the accident, she still had pain in her left shoulder (feeling needles, sharp pins, and burning), left lower back, and from left hip to left ankle. (T. 30)

Petitioner testified that she was referred to Dr. Steven Sclamberg, an orthopedic doctor, for her left shoulder on June 4, 2025. (T. 30) Dr. Sclamberg administered an injection on her left shoulder which helped. (T. 30-31)

Petitioner testified that she followed up with Dr. Sclamberg on July 2, 2025 and reported having 90% relief from the injection. (T. 31) Petitioner testified that the pain returned to her left shoulder and she began to feel needles and burning. (T. 31)

Petitioner testified that she followed up with Dr. Sclamberg on July 30, 2025 and was recommended to undergo surgery for her left shoulder. (T. 31) Petitioner testified that she would like to proceed with the surgery. (T. 32)

Petitioner testified that Dr. Mohiuddin recommended an injection for her back and did receive that injection on August 20, 2025. (T. 32) Petitioner explained that after receiving this injection in her back, she felt less pain and could do more things. (T. 32)

Petitioner testified that she followed up with Dr. Sclamberg on September 9, 2025 pending the left shoulder surgery. (T. 32) The last time she saw Dr. Sclamberg was on February 4, 2026 and approval for surgery was still pending. (T. 32-33)

Petitioner testified that she wants the left shoulder surgery recommended by Dr. Sclamberg because she is still in a lot of pain and wants to heal. (T. 33) As she testified, Petitioner states that the pain comes and goes and her pain level is at 4 currently. (T. 33)

Petitioner testified that her "neck is okay" and have no problems. (T. 33) Petitioner testified that her shoulder and lower back hurt the most. (T. 34) Following the accident, Petitioner stated that she had headaches and left elbow pain that have resolved. (T. 34)

Petitioner testified that she returned to work on April 29, 2025 following the accident. (T. 34) Her job is primarily working on a computer and her condition has affected her ability to perform her job "just a little bit." (T. 35) Sitting for 8 hours hurts her back. She is right-hand dominant. (T. 35) Petitioner testified that she has hard time putting deodorant on the left side, can't do hair, and has difficulty putting on a bra. (T. 35) Petitioner testified that currently, she is taking Ibuprofen and muscle relaxers every six to eight hours which helps but she does not want to take a lot of medication. (T. 36)

On cross-examination, Petitioner testified that she received chiropractic treatment at New Life Medical Center which has completed. (T. 38) Petitioner testified that she is not complaining about her right leg or right knee. She did state that her left leg sometimes hurts but is not receiving any treatment. (T. 38) Petitioner confirmed that her left knee, left elbow, left wrist are fine. (T. 38-39) Petitioner testified that she is having abdominal pain and received treatment from a gynecologist about a month and a half ago. (T. 39) She does not know if it's related to this accident. She does have some pain in her pelvis. She stated that she was scheduled to have surgery but her insurance changed and now she has new doctors. She must start over again with new doctors. (T. 40) Petitioner is not having headaches anymore. (T. 40) Petitioner confirmed that she has pain and burning feelings in her shoulder blade. (T. 41) She is still having problems with her lower back

but is not currently receiving treatment. (T. 41) Petitioner confirmed that the last time she received an injection for lumbar spine and given medication was on August 20, 2025. (T. 42)

On cross-examination, Petitioner testified that there are deliveries at the warehouse location because she sees semi-trucks going in and out every day. (T. 42)

Summary of Medical Records

On April 25, 2025, Petitioner was transported via ambulance to St. Joseph Medical Center. (PX 1) At the emergency room, Petitioner had pain in her head, left wrist, chest, ribs, and right knee following the work accident. Id. Petitioner underwent x-rays of her chest, pelvis, right knee, left elbow, left wrist, which did not show acute abnormalities. Petitioner underwent a CT scan of her head which showed no acute intracranial abnormality. (PX 1)

On April 30, 2026, after the emergency room, Petitioner presented to Dr. Mohiuddin with neck pain, low back pain, abdominal pain, headaches, chest wall/pectoralis muscle pain, left knee pain, and left shoulder pain. (PX 2 pp. 12-14)) On physical examination, Dr. Mohiuddin noted tenderness over the right abdomen, bilateral pectoral area, left shoulder, left wrist, back, and left knee. Petitioner had positive examination tests of Kemp's bilaterally, shoulder range of motion, and axial loading. Dr. Mohiuddin recommended physical therapy, which Petitioner completed at New Life Medical Center from April 30, 2025 through October 24, 2025. (PX 2, PX 3)

On May 5, 2025, Petitioner went back to the emergency room at St. Joseph Medical Center with 6/10 left lower quadrant pain. (PX 1) A CT scan of Petitioner's abdomen showed endometrial distension and minimal mild descending and sigmoid colonic diverticulosis. (PX 1)

On May 14, 2025, Petitioner followed up with Dr. Mohiuddin where he recommended MRIs of the cervical spine, lumbar spine, and left shoulder. (PX 2 pp. 17-18) Petitioner underwent the MRIs on May 29, 2025. (PX 2) The MRI of the lumbar spine showed scattered degenerative discogenic changes, most prominent at L5-S1 with abutment of the traversing S1 nerve roots; mild-to-moderate right neuroforaminal narrowing at this level with abutment of the right exiting L5 nerve root. (PX 2 pp. 20-21) The cervical spine MRI showed scoliosis and straightening of normal lordosis. (PX 2 pp. 22-23) The left shoulder MRI showed (1) calcific tendinitis/bursitis of the supraspinatus insertion with low-to-moderate grade bursal surface partial tear, low-grade articular and bursal surface partial tear of the infraspinatus tendon; (2) low-grade partial tear of the subscapularis insertion with mild associated medial subluxation of the biceps tendon; (3) subacromial impingement and mild osteoarthritis. (PX 2 pp. 24-25)

On June 4, 2025, Petitioner presented to an orthopedic surgeon, Dr. Sclamberg, for her left shoulder with pain going overhead with diminished range of motion. (PX 2 pp. 26-27) On physical examination, Dr. Sclamberg noted positive Hawkins and Neer testing. Dr. Sclamberg reviewed the left shoulder MRI and diagnosed Petitioner with impingement syndrome with partial thickness rotator cuff tearing with calcific tendinitis. Dr. Sclamberg noted Petitioner had no previous history of problems with her left shoulder prior to injury and that she had a competent mechanism of injury

to cause her condition. Dr. Sclamberg administered a lidocaine and Kenalog injection into Petitioner's left shoulder. (PX 2 p. 26)

On June 24, 2025, Petitioner presented to Dr. Mohiuddin with her headaches and chest pain resolved; 2/10 left knee and low back pain with numbness/tingling that travels down her left lower extremity. (PX 2 pp. 30-32) On physical examination to the lumbar spine, Dr. Mohiuddin noted tenderness, positive left-sided straight leg raise test, and positive pain for axial and facet loading bilaterally. Dr. Mohiuddin reviewed the MRI findings and recommended Petitioner continue conservative care. (PX 2 pp. 30-32)

On July 2, 2025, Petitioner followed up with Dr. Sclamberg with 90% relief from the injection. (PX 2 p. 35) Dr. Sclamberg recommended Petitioner continue her physical therapy for the next month and return on a PRN basis. (PX 2 p. 35)

On July 22, 2025, Petitioner followed up with Dr. Mohiuddin with similar subjective complaints and chest pain when she is laying down with occasional heart palpitations and shortness of breath. (PX 2 pp. 37-38) Petitioner noted that her neck pain had improved. Dr. Mohiuddin recommended a STAT chest CT scan and a left L4 to S1 epidural steroid injection. (PX 2 pp. 37-38)

On July 30, 2025, Petitioner presented to Dr. Sclamberg after initially doing well following the injection, but the pain had returned. (PX 2 p. 40) Dr. Sclamberg noted the pain went down the deltoid towards her left elbow and pain over the anterior shoulder with diminished strength. Dr. Sclamberg noted tenderness and positive Hawkin's test on physical examination. Dr. Sclamberg indicated that given Petitioner had failed conservative management including injection, physical therapy, home exercise, and time, he recommended an arthroscopy with subacromial decompression, possible biceps tenodesis, and possible rotator cuff repair. (PX 2 p. 40)

On July 30, 2025, Petitioner underwent the CT scan of her chest which showed no acute intrathoracic pathology detected. (PX 2 pp. 43-45)

On August 5, 2025, Petitioner followed up with Dr. Mohiuddin with neck pain improving but intermittent numbness/tingling down her left upper extremity; 4/10 low back pain with numbness/tingling into her left lower extremity; 3/10 left leg and knee pain; and 4/10 chest pain. (PX 2 pp. 46-47) Dr. Mohiuddin recommended the left L4-S1 epidural steroid injection. (PX 2 pp. 46-47)

On August 20, 2025, Dr. Alyson Engle performed epidural steroid injection. (PX 2 pp. 49-50)

On September 9, 2025, Petitioner followed up with Dr. Engle with significant improvement from the injection with 3/10 pain. Dr. Engle noted that they would continue to monitor Petitioner's condition. (PX 2 p. 54)

On September 9, 2025, Petitioner followed up with Dr. Sclamberg with persistent pain and functional limitations in the left shoulder pending surgery. (PX 2 p. 52)

Petitioner last presented to Audrey Chakkonis, PA, on February 4, 2026 with continued left shoulder pain and inability to lift her left arm all the way up. The surgery recommendation was continued pending approval. (PX 2 pp. 56-57)

III. CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

The Arbitrator adopts the above findings of fact and incorporates them by reference as though fully set forth herein.

The purpose of the Illinois Workers' Compensation Act is to protect employees against risks and hazards that are peculiar to the nature of the work they are employed to do. An injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. The

phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. The words "arising out of" refer to the origin or cause of the accident and pre-suppose a causal connection between the employment and the accidental injury. Both elements must be present at the time of the accidental injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill.2d 478, 483 (1989). When an employee is injured at a point off of the employer's premises while traveling to and from work, the injuries are not compensable. There are two exceptions to this general rule. Recovery has been permitted for off-premises injuries incurred by an employee when an employee's presence at the place where the accident occurred was required in the performance of his duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. Recovery has also been permitted for injuries sustained by an employee in the parking lot provided by and under the control of the employer. *Id*. at 483-484. In this case, none of the exceptions noted apply. Petitioner was injured on a road used by the general public and not under the control of Respondent. Therefore, under Illinois law, Petitioner's benefits must be denied.

Petitioner testified that her accident occurred when she was struck by a co-worker's vehicle in the middle of the street after she clocked out from work for lunch. (T.10-11; PX 8) The accident report stated that Juan Anecola, a co-worker, was leaving work to go to lunch when he strikes Petitioner with his vehicle in the middle of Spitzer Road, a public road. (PX 8; PX 9D, T. 18) She was crossing the road to get to Respondent's parking lot located on Spritzer Road which was opposite the building where she worked. (T. 18) The Arbitrator notes that Spritzer Road is not owned, maintained, or controlled by Respondent. Petitioner testified that the building she worked in has a small parking lot that gets filled by 7 am every day. (T. 12) Petitioner testified that during orientation, she was told to use the parking lot across the street which is the warehouse owned by Respondent if the parking lot by her building is full. (T. 12-14) Petitioner testified that when she arrived at work on April 25, 2025, there was no parking space by her building so she parked across the street. (T. 14)

The facts in this case are identical to *Osborn v. Industrial Com.*, 50Ill.2d 150, 277 N.E.2d 833 (1971). In Osborn, a claimant parked her vehicle in the lot owned by her employer and was struck by a vehicle driven by a co-worker as she was crossing the street that separated the factory where she worked and parking lot where she parked at the end of her shift. The Illinois Supreme Court held that the street where the injuries occurred was not under the control of the employer, nor was the claimant acting at the direction of her employer when she was crossing the street, or for employer's benefit or accommodation. The Court concluded that the matter was within the general rule that injuries which occur to an employee while he is going or coming from his place of employment do not arise out of or in the course of his employment. See *Quarant v. Industrial Com*., 38Ill.ed 490 (1967).

Applying *Osborn* to this case, it is undisputed that Petitioner had clocked out to go to lunch and was crossing a public road when she was struck by a vehicle driven by her co-worker. The Arbitrator finds that Petitioner failed to demonstrate the "arises out of" element since the accident occurred in a public street, not controlled by Respondent, and when she was crossing the road, she was not acting at the direction of Respondent, or for Respondent's benefit or accommodation. She was simply going to lunch for her own benefit without Respondent directing her. It is irrelevant whether the area is industrial without a crossing area as demonstrated by Petitioner's testimony.

Petitioner cites *Mores-Harvey* in support of her claim. In *Mores-Harvey*, a waitress slipped and fell on ice when exiting her car behind the employer's restaurant in a parking lot that surrounded the building she worked in. *Mores-Harvey v. Industrial Commission*, 345 Ill.App.3d 1034, 804 N.E.2d 1086, 1092, 281 Ill.Dec. 791 (3d Dist. 2004). Although the employer did not specifically direct the claimant to park in the restaurant's lot, there was nowhere else to park, and the claimant routinely parked there. *Id*. The court reasoned that the general public could choose any spot in the parking lot while the claimant had limited choices, therefore, her exposure to risk was greater than the general public. *Id*. *Mores-Harvey* is a parking lot case, this case is not a parking lot case. Any legal analysis based on parking lot is misplaced. Rather, this is an accident on a public road while Petitioner was on her lunch break.

The Arbitrator notes that Petitioner had a fixed place of employment and was crossing a public road to Respondent's parking lot when she was struck by a vehicle. Respondent did not own, maintain, or control the public road or any drivers on the public road. Accidents on a public road while leaving work for lunch are not compensable. Applying the law and the cases from the Supreme Court of Illinois, Petitioner's benefits are denied.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Arbitrator has already found Petitioner's injury did not arise out of her employment. Thus, no benefits are awarded, and the Arbitrator makes no findings regarding Petitioner's current condition of ill-being.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Arbitrator has already found Petitioner's injury did not arise out of her employment. Thus, no benefits are awarded, and the Arbitrator makes no findings regarding medical treatment.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Arbitrator has already found Petitioner's injury did not arise out of her employment. Thus, no benefits are awarded, and the Arbitrator makes no findings regarding any prospective medical care.

For the reasons stated above, Petitioner's benefits under the Illinois Workers' Compensation Act are denied.

It is so ordered:

Jennifer Bae
Arbitrator Jennifer Bae

Date: April 7, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025142
Case Name	Joe Hutchison v. Perfection Painting
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0281
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	James Keefe Jr
Respondent Attorney	R Mark Cosimini

DATE FILED: 10/5/2026

/s/Frank Soto, 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)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOE HUTCHISON,

Petitioner,

vs. NO: 24 WC 25142

PERFECTION PAINTING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability benefits, prospective care, average weekly wage, and penalties and fees, and being advised of the facts and laws, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the following changes incorporated as stated herein. 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 Decision of the Arbitrator contains a clerical error regarding the amount of penalties awarded pursuant to §19(k) of the Illinois Workers' Compensation Act. Specifically, the Order section awarded $13,433.46 in §19(k) penalties, whereas the body of the Decision awarded $13,433.36 in §19(k) penalties. These amounts are off by 10 cents. The Commission thus corrects this clerical error by changing the amount of §19(k) penalties awarded in the Order section to $13,433.36, which is consistent with the Arbitrator's calculations provided in the body of the Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 17, 2025, is modified as stated herein. In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

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 $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.

OCTOBER 5 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/23/26
FJS/mek
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025142
Case Name	Joe Hutchison v. Perfection Painting
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	James Keefe Jr
Respondent Attorney	R Mark Cosimini

DATE FILED: 12/17/2025

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 16 2025 3.50%

26IWCC0281

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)

Joe Hutchison
Employee/Petitioner

v.

Perfection Painting
Employer/Respondent

Case # **24** WC **25142**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin**, on **10/8/2025**. 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **8/28/2024**, 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 $**839.00**; the average weekly wage was $**$1,398.33**.

On the date of accident, Petitioner was **51** 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 $**26,669.33** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**26,669.33**.

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

ORDER

Temporary Total Disability and Temporary Partial Disability

Respondent shall pay Petitioner temporary total disability benefits of $932.22/week for 57-3/7 weeks, commencing August 29, 2024 through September 21, 2025 and September 26, 2025 through October 8, 2025, as provided in Section 8(b) of the Act.

Respondent shall be given a credit for $26,669.33 for indemnity payments made.

Medical Expenses and Prospective Medical Care

Respondent shall pay the medical expenses in Petitioner's Exhibit 10 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be entitled to a credit for amounts paid.

Respondent shall authorize and pay for Petitioner's physical therapy and work hardening/conditioning and a repeat FCE if necessary.

Penalties and Attorneys' Fees

Respondent shall pay to Petitioner attorneys' fees of $5,373.34, as provided in Section 16 of the Act; $13,433.46 as provided in Section 19(k) of the Act; and $4,950.00, as provided in Section 19(l) of the Act.

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

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

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

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

Bradley D. Gillespie
Signature of Arbitrator

DECEMBER 17 2025

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOE HUTCHISON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 24WC025142**
	)	
PERFECTION PAINTING,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner claims he sustained injuries primarily to the right wrist and right shoulder arising out of an August 28, 2024, work accident. (Arb. Ex. 2) Respondent disputes accident, causation, medical bills, TTD benefits, and prospective medical care. (Arb. Ex. 1) Petitioner filed a Petition for Penalties and Attorneys' Fees.

Petitioner, currently 53 years of age, is a lifetime painter of 30 years. (Tr. p. 18) He has worked union, non-union, commercial, residential, inside and outside the State of Illinois. (Tr. pp. 18-19) He has had multiple orthopedic surgeries but none to the right wrist and right shoulder prior to August 28, 2024.

On August 16, 2024, Petitioner contacted Respondent, who is owned by Tom Jackson, through an Indeed ad as a residential painter. (Tr. p. 19-21) They arranged an interview the following week. (Tr. p. 21)

Petitioner testified that he met Jackson August 21, 2025. (Tr. p. 21) They discussed Petitioner's experience and the job. (Tr. pp. 21-22) Petitioner testified that Jackson hired him to work full time, 40 hours a week at $35.00 an hour with the possibility of some weekend overtime. (Tr. p. 22) There was a promise to go to $40.00 per hour.

Petitioner testified that he was at a residential job site August 28, 2024. (Tr. pp. 22-23) Petitioner placed a ladder up against a partial wall. (Tr. pp. 23-24) He estimated being 10 to 12 feet in the air. The ladder slid out and Petitioner fell to the ground. (Tr. pp. 24-25) Petitioner testified that he believed he landed on the ladder he was standing on or another ladder on the ground. (Tr. p. 24) His right palm struck the ground and his low back. (Tr. p. 25) Petitioner had pain everywhere but mostly in the right upper extremity. (Tr. p. 26)

Petitioner testified that he never told anyone that any of his personal health conditions caused him to fall from the ladder. (Tr. pp. 41-42) He believes the ladder may have slid on the drop cloth on the floor. (Tr. p. 25)

Petitioner's co-worker took him to St. Elizabeth's Emergency Room. (Tr. p. 26) Petitioner reported he was on a ladder when it slipped out from under him causing him to fall approximately 10 to 12 feet. (PX 1 p. 1) He fell onto another ladder lying on the floor. *Id.* Petitioner reported pain to the right shoulder/forearm/wrist, bilateral hip, bilateral ankle and chest wall. *Id.* He noticed an obvious deformity to his right wrist. *Id*. On exam, Petitioner had mild tenderness to the right shoulder and elbow with moderate to severe tenderness to the right forearm and wrist. (PX 1 p. 3) The hospital performed a CT of the pelvis that was normal, x-ray of the right wrist that revealed a comminuted fracture of the distal radius, x-ray of the hip that revealed a femoral neck fracture, and a right shoulder x-ray that revealed no fracture. (PX 1 pp. 5-7)

The hospital, under anesthesia, set the fracture in the right wrist. (PX 1 p. 9) The hospital took Petitioner off work and referred him to an orthopedic specialist. (PX 1 p. 12).

Petitioner testified the orthopedist the ER referred him could not get him in for weeks. (Tr. p. 27) Since the hospital recommended immediate surgery for the wrist, he saw one of his former surgeons, Dr. Matthew Bradley on September 3, 2024. (Tr. pp. 27-28) Petitioner reported right elbow, wrist and left hip pain since the fall at work. (PX 2 p. 1) He denied prior right upper extremity injuries. *Id.* Dr. Bradley diagnosed non-displaced left inferior rami fracture, resolving left ankle pain, resolving right elbow sprain and intra articular comminuted distal right radius fracture. (PX 2 p. 3) He recommended surgery. *Id*.

On September 11, 2024, Dr. Bradley performed open reduction internal fixation of the right distal radius fracture. (PX 2 pp. 4-5)

Post-operatively, Petitioner saw Dr. Bradley September 26 and November 7, 2024. Petitioner denied significant pain. Dr. Bradley ordered physical therapy. (PX 2 pp. 7-10)

Petitioner testified that from the date of surgery until he started physical therapy, he was in a sling that basically immobilized his right upper extremity.

Petitioner started physical therapy October 4, 2024. He reported constant right wrist pain with the inability to move the thumb. He also had lateral right ankle and foot pain. (PX 5)

Petitioner testified that his right shoulder hurt since the accident but as the arm became more active in physical therapy, he called it to the attention of Dr. Bradley. (Tr. p. 30-31) He told physical therapy from the start, but they informed him the focus initially was on the right wrist rehab. On November 25, 2024, physical therapy noted that Petitioner had a constant ache deep in the right shoulder since the accident. He continued to have problems in the right wrist, particularly along the right ulnar styloid process. (PX 5 p. 63) On December 4, 2024, Petitioner was re-evaluated at physical therapy. The therapist documented the increased right shoulder pain that had been present since the accident. He still had limited wrist flexion and grip strength on the right. He had positive exam findings in the right shoulder. (PX 5 pp. 52-53)

On December 9, 2024, Petitioner returned to Dr. Bradley. His primary complaint to the right wrist was weakness to grip. He had improved motion though not completely normal. Dr. Bradley discussed with Petitioner his right shoulder pain since the accident. He recalled fracturing his clavicle many years ago but no problems since then. Dr. Bradley's impression was impingement syndrome. He provided a right shoulder injection and ordered physical therapy. Petitioner reported some excellent relief for a short time from the injection. Dr. Bradley ordered an MR Arthrogram. (PX 2 pp. 11-13)

Petitioner commenced physical therapy for the right shoulder on December 16, 2024. (PS 6 p. 94) On February 10, 2025, Petitioner underwent the right shoulder MRI. The radiologist interpreted a labral tear, upper subscapularis longitudal split tear and AC joint arthritis. (PX 4).

On February 20, 2025, Petitioner returned to Dr. Bradley. He was making good gains in physical therapy with his wrist. He was still weak. Petitioner's right shoulder continued to be painful and the injection had worn off. Dr. Bradley diagnosed a large displaced labral tear. Because Petitioner failed conservative measures, he recommended surgery. (PX 2 pp. 15-16)

On March 5, 2025, Dr. Chris Kostman performed a Section 12 exam at Respondent's request. Dr. Kostman opined that Petitioner sustained a right distal radius fracture and a right shoulder strain as a result of the work accident. He opined the right shoulder SLAP tear and subscapularis findings were not related to the fall. He opined the treatment to date was medically reasonable and necessary. He recommended against further treatment for the right shoulder and right wrist. He opined Petitioner did not have limitations as related to his painting activities based on his current range of motion and lifting, but additional information could be obtained with a Functional Capacity Evaluation (FCE) to better determine his gripping and lifting capabilities involving the right wrist. He did not feel restrictions were necessary for the shoulder. (RX 11 pp. 42-43)

Petitioner testified that Respondent paid temporary total disability benefits from the date of injury until approximately the end of April 2025 following receipt of Dr. Kostman's report. (Tr. pp. 32-33)

On April 9, 2025, Dr. Bradley performed right arthroscopic surgery consisting of labral debridement, subscapularis rotator cuff repair and subacromial decompression and bursectomy. (PX 2 pp. 17-19)

Petitioner returned to Dr. Bradley on April 24, 2025. He was doing well other than he slipped in the shower and reached out to catch himself. It caused some pain in the shoulder but that was settling down. Dr. Bradley recommended physical therapy and placed him on work restrictions. (PX 2 pp. 20-22)

Petitioner returned to Dr. Bradley on June 12, 2025. He was not using pain medication specifically for the shoulder. Petitioner acknowledged that he has had a chronic prescription for Hydrocodone following a back surgery many years ago. Respondent was not accommodating his restrictions. He was kept on light duty and given an order for an FCE. (PX 2 pp. 23-25)

On July 22, 2025, Petitioner underwent a Functional Capacity Evaluation. Petitioner had the ability to perform 69% of the physical demands of a painter. The items he was unable to achieve successfully included constant simple grasping, constant gross coordination, constant forward reaching, constant above shoulder reaching, occasional power lift 75 pounds, occasional shoulder lift 85 pounds, occasional overhead lift 50 pounds, occasional unilateral lift 60 pounds, occasional unilateral carry 60 pounds and carrying 60-pound buckets of latex pain. Petitioner gave consistent effort. (PX 7 pp. 1-2)

Petitioner returned to Dr. Bradley on August 19, 2025. His physical therapy was stopped because work comp did not authorize or pay for it. He continued his home exercises but had weakness. He still had pain in the right distal forearm. Trying to paint caused his wrist to become more painful. (PX 2 p. 26) Dr. Bradley opined Petitioner's right wrist was not fully rehabbed. He recommended a work hardening program. It was also recommended that Petitioner could undergo removal of the hardware from the wrist. Dr. Bradley felt additional rehab could improve upon his work restrictions. (PX 2 p. 28) He kept Petitioner on light duty restrictions.

On August 29, 2025, Dr. Bradley performed surgery to remove the hardware in the right wrist. (PX 2 pp. 30-32) He kept Petitioner off work.

On September 11, 2025, Petitioner returned to Dr. Bradley. The pain in his forearm resolved. He had some swelling and grip weakness. Dr. Bradley ordered physical therapy including work hardening in an effort to improve upon restrictions and get him back to painting. He restricted him to no use of the right upper extremity. (PX 2 pp. 35-37)

Petitioner most recently saw Dr. Bradley on October 2, 2205. He continued restrictions of no use of the right upper extremity. (PX 2 p. 41).

Petitioner testified that Respondent has not authorized the physical therapy and work conditioning. He still has weakness in the right shoulder and wrist. The pain has improved.

Petitioner testified that he attempted a union painting job for 3½ days from September 22 through September 25, 2025. (Tr. pp. 37-38) He was using a light roller and paint brush. *Id.* He testified the first two days went well but as he continued, he had increased pain and weakness. He called the boss to explain he could not perform the job.

Petitioner is optimistic that with additional rehabilitation and work conditioning he can get back to painting.

Petitioner testified that after his TTD benefits were stopped, he applied to multiple types of positions including painting jobs to get back to work despite his restrictions and limitations. (PX 8, R.X 12). The lack of money has caused financial hardship and marital problems. (Tr. p. 40)

Respondent offered into evidence multiple documents regarding Petitioner's prior workers' compensation claims. (RX 6; RX 8; RX 9) None of those claims involve the right shoulder or wrist. *Id.*

Petitioner acknowledged that Dr. Bradley, following a total hip replacement, had placed restrictions regarding his kneeling and squatting. He also had a left knee injury at the end of July 2024 for which he sought medical treatment through mid-July. He had significant knee pain for a couple of weeks.

Petitioner testified that he was never restricted from climbing ladders. (Tr. p. 42) He always returned to painting after his prior workers' compensation claims and injuries.

Tom Jackson testified on behalf of Respondent. Jackson testified that he hired Petitioner along with another painter for residential painting jobs. He testified the wage information admitted into evidence was of similar situated employees to Petitioner. He could not deny that he told Petitioner his hourly rate could go from $35.00 to $40.00 per hour.

Jackson had no information about the work accident other than Petitioner reported he fell off a ladder and shattered his wrist. Jackson believes the ladder broke.

On cross examination, Jackson admitted that he has paid employees for 40 hours per week. He admitted that he paid Petitioner more per hour than the other new painter he hired at only $30.00 per hour. Petitioner admitted that his foreman gets close to 40 hours a week at $36.00 per hour after 10 years. Jackson admitted that since the accident Petitioner contacted him about returning to work but Jackson could not allow him to work without a full duty release for the right upper extremity.

Petitioner deposed Dr. Matthew Bradley August 22, 2025. (PX 3) Dr. Bradley testified surgery to remove the wrist plate is reasonable and necessary to alleviate chronic pain and discomfort. (PX 3 pp. 24-25) He opined the work accident caused the right wrist fracture. *Id*. He opined the right shoulder surgery was reasonable, necessary and causally related to the work accident. (PX 3 pp. 25-26) Dr. Bradley testified any final restrictions will be determined after the plate is removed and he undergoes additional therapy for the shoulder. (PX 3 pp. 26-27)

On cross-examination, Dr. Bradley testified he never restricted Petitioner from climbing a ladder. (PX 3 p. 29) He testified as of April 2025; Petitioner could have performed light painting activities but not repetitive or climbing. (PX 3 p. 42) He anticipated after removing the plate restrictions for the wrist would last about a month. (PX 3 p. 45).

Respondent deposed Dr. Christopher Kostman on September 24, 2024. (RX 11). Dr. Kostman testified that the right wrist fracture and surgery by Dr. Bradley was reasonable, necessary and causally related to the work accident. (RX 11 pp. 14-15) He opined all the treatment to the right shoulder up until surgery was reasonable and necessary. (RX 11 p. 15). He opined the accident caused the right radius fracture and shoulder strain with a temporary exacerbation of AC joint and glenohumeral joint arthritis.(RX 11 pp. 16-17) He opined as of the exam Petitioner did not need limitations related to painting based upon range of motion and lifting but that additional information could be obtained with an FCE. (RX 11 p. 18) He testified he was not certain how the FCE related to limitations for the wrist. (RX 11 pp. 18-19)

On cross examination, he agreed that the plate can be removed from the wrist even if it is not commonly done. He agreed that the injury exposes Petitioner to early onset of wrist arthritis. (RX 11 pp. 21-22) He agreed the fall could cause the tears in the shoulder or exacerbate them. (RX 11 pp. 24-25) He could not give an opinion on the current right wrist and shoulder restrictions because he had not examined Petitioner in five months. (RX 11 p. 27)

CONCLUSIONS OF LAW

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

The Arbitrator finds and concludes that Petitioner sustained an accidental injury arising out of and in the course of employment on August 28, 2024. In support of the conclusion, the Arbitrator finds Petitioner's testimony credible and corroborated by the medical records that his ladder slipped out from underneath him and he fell approximately 10 feet to the floor.

Respondent argues that Petitioner's prior health issues unnecessarily exposed him to an unreasonable risk of injury. The Arbitrator does not find the defense reasonable. There were no medical records indicating that Petitioner was restricted from painting or climbing a ladder. Respondent met with Petitioner in person and hired him. There is no medical opinion that Petitioner's prior orthopedic conditions caused him to fall from the ladder. Petitioner denied ever telling anyone that his health conditions caused him to fall from the ladder. Climbing a ladder to paint is a clear employment risk for a residential painter.

Disputed issue F - Are Petitioner's conditions of ill-being causally connected to the work injury?

Petitioner's right wrist and right shoulder conditions are causally connected to the work accident. In support of the opinion, the Arbitrator finds the opinion of Dr. Bradley more persuasive than the opinion of Dr. Kostman.

Both physicians agree that the accident caused the comminuted distal right radius fracture. As for the right shoulder, Petitioner reported shoulder pain at the Emergency Room and underwent an x-ray. His arm was immobilized for a couple of months and as the arm became more active he reported increasing right shoulder pain. Dr. Bradley testified credibly that the mechanism of injury was consistent with causing the right shoulder pathology. Dr. Kostman conceded that a fall from 10 feet could have at least aggravated the right shoulder condition considering no pre-existing treatment. He did not review the therapy records after the wrist surgery that documented right shoulder pain.

Petitioner also suffered a non-displaced left pelvis fracture and right ankle injury for which no treatment has been recommended.

Disputed issue G - What were Petitioner's earnings?

There is a dispute regarding the average weekly wage. Petitioner claims an average weekly wage of $1,400.00 which is based upon Petitioner being hired at $35.00 per hour for 40 hours per week. Respondent argues for an average weekly wage of $987.24 because a similar situated employee applies since Petitioner only worked three days before the work accident.

The Arbitrator finds and concludes the average weekly wage to be $1,398.33. The Arbitrator relies on the third method to compute wages set forth in Section 10 - Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed.

Petitioner earned in 3 days $839.00. He worked 3/5 of week. The $839.00 divided by 3/5 weeks worked results in AWW $1,398.33. This is closest to the $35.00 x 40 hour that Respondent hired Petitioner to work The Arbitrator relies on the Indeed ad that promoted full time work. (PX 9). The Arbitrator finds credible Petitioner's testimony that Jackson told him he was hiring him for 40 hours a week, Monday through Friday at $35.00 per hour. Jackson conceded a normal painting job is Monday through Friday, showing up five days a week. Petitioner testified he has never accepted less than a full-time painting job in 30 years.

While Jackson suggested on direct examination that the wages submitted into evidence were for similar situated employees, he conceded that the other painter he hired at the same time as Petitioner was getting paid $5.00 per hour less than Petitioner. This is not like Petitioner who was hired at $35.00 per hour. The foreman, who had been with Jackson for 10 years, was getting 40 hours per week at $36.00 per hour. Petitioner's $35.00 per hour speaks to Petitioner's significant experience in painting and the Arbitrator finds persuasive that he intended to take a job that would pay him at least 40 hours per week because he could work job unsupervised.

Respondent did not have a similar employee to Petitioner other than the foreman. To use another employee with far less painting experience as requested by Respondent would lead to an unfair and absurd result for Petitioner. In *ABF Freight System v. Indus. Comm'n*, the employee in the year preceding the accident initially worked as a nonunion casual employee 19 hours per week but then a union spotter for 36 hours per week. The Commission excluded the earnings and weeks when the employee worked as a casual employee and made the calculation solely on the union wages and weeks. The Appellate Court affirmed. 2015 IL App (1st) 141306WC.

The Court held that "employment" under Section 10 means the particular job a claimant was engaged in at the time of the injury rather than the continuous period of employment with a single employer. The Court explained that at the time of the accident, the employee was earning wages as a spotter—that is what he lost as a result of the accident. Having secured the union position, there is no indication that the employee would ever return to casual employment. As such, the true measure of lost wages was what the employee was earning at the time he was injured. This is consistent with the remedial purposes of the Act

Here, Petitioner had extensive 30 years of experience as a painter that got him a higher hourly wage than other painters for Respondent. Petitioner took the full-time job, which is 40 hours per week. Even using the similar situated employee analysis, the Arbitrator finds that

Petitioner's position was like the foreman working 40 hours per week but at $35.00 per hour rather than $36.00 per hour Jackson paid the foreman of 10 years.

Disputed issue J - Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator finds and concludes that the medical bills in Petitioner's Exhibit 10 are reasonable, necessary and causally related to the work accident.

Respondent shall pay the bills pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be entitled to a credit for amounts paid.

Disputed Issue K - Is Petitioner entitled to prospective medical care?

The Arbitrator finds that Petitioner is entitled to prospective medical treatment and orders Respondent to authorize and pay for Petitioner's physical therapy and work hardening/conditioning and a repeat FCE if necessary because the right wrist and shoulder conditions are causally connected to the work accident.

Disputed issue L - What temporary benefits are in dispute?

Respondent shall pay Petitioner temporary total disability benefits for 57-3/7ths weeks, representing August 29, 2024, through September 21, 2025, and September 26, 2025, through October 8, 2025, at a rate of $932.22 per week.

In support of the conclusion, the Arbitrator finds that Petitioner was taken off work or placed on work restrictions that Respondent has not accommodated for the right wrist and shoulder conditions. Petitioner has not reached maximum medical improvement.

Respondent is entitled to a credit for $26,669.33 paid.

Disputed issue M - Should penalties and fees be imposed upon Respondent?

The Arbitrator finds that Respondent's denial of temporary total disability benefits is unreasonable and vexatious. Dr. Kostman conceded that the right wrist condition was work related. While he felt Petitioner could return to work performing his painting activities, he also agreed that a Functional Capacity Evaluation could provide additional information regarding restrictions, if any. Petitioner underwent a valid FCE. The FCE concluded that Petitioner, for certain activities involving his wrist, could not return to full duty as a painter. Moreover, Petitioner underwent the right wrist surgery to remove the hardware for which he remains disabled from full duty painting yet Respondent is not paying TTD benefits.

The Arbitrator also finds no good faith basis to the accident defense raised by Respondent at arbitration.

The Arbitrator finds that Respondent had no good faith basis to terminate Petitioner's temporary total disability benefits as of April 26, 2025, and again after a one-time payment on September 10, 2025, to October 8, 2025, for the right wrist condition.

As a result, pursuant to Section 19(k) of the Act, the Arbitrator awards 50% of the TTD award for $13,433.36 and 20% of the TTD award pursuant to Section 16 attorneys' fees for $5,373.34. The Arbitrator also awards $30.00 per day for 165 days from 4/26/25 to 9/9/25 (137 days) and 9/11/25 to 10/8/25 (28 days) pursuant to Section 19(l) for $4,950.00.

$932.22 x 57-3/7 weeks = $53,536.06 - $26,669.33 = $26,866.73

$26,866.73 x 50% = $13,433.36

$26,866.73 x 20% = $5,373.34

165 x $30.00 = $4,950.00

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007946
Case Name	Shawn Curry v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0282
Number of Pages of Decision	25
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 10/5/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN CURRY,
Petitioner,

vs. NO: 23WC007946

CITY OF PEORIA,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of nature and extent and average weekly wage, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 20, 2026 is hereby affirmed and adopted.

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 5 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/23/26
FJS/afr
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007946
Case Name	Shawn Curry v. City of Peoria
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 1/20/2026

/s/ Dennis OBrien, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 13 2026 3.49%

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

Shawn Curry
Employee/Petitioner

v.

City of Peoria
Employer/Respondent

Case # **23** WC **07946**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Peoria**, on **November 20, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/3/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**119,733.50**; the average weekly wage was $**2,302.57**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **2** dependent children.

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

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

Respondent is entitled to 8(j) credit.

ORDER

Petitioner sustained an accident that arose out of and in the course of the employment by the Respondent on October 3, 2022.

Timely notice of the accident of October 3, 2022 was given to Respondent within the time limits set out in the Act.

Petitioner's medical condition of Post-Traumatic Stress Disorder is causally related to the accident of October 3, 2022.

Petitioner's average weekly wage while working for Respondent in the year prior to his accident was $2,302.57, resulting in annual earnings of $119,733.50.

Petitioner was temporarily totally disabled as a result of the accident of October 3, 2022 from October 19, 2022 through October 22, 2022, from October 24, 2022 through October 25, 2022, for March 15, 2022, for March 19, 2022, from March 21, 2023 through March 22, 2023, and from June 1, 2023 through March 17, 2025, a period of 94 3/7 weeks.

Respondent is entitled to credit for payment of full salary from June 1, 2023 to June 2, 2024, a period of 52 3/7 weeks, resulting in a net temporary total disability award of 42 weeks at a rate of $1,535.05 per week. Respondent only receives credit for the time periods paid, and not the amount of money paid. City of Joliet v Illinois Workers Compensation Commission 2023 IL. App (3d) 220175WC.

With the exception of consultation/collateral contact and letter fees, all of the bills included in Petitioner Exhibit 9 are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in the October 3, 2022 accident, and are to be paid pursuant to Sections 8(a) and 8.2 of the Act.

Petitioner sustained permanent partial disability to the extent of 25% loss of use of the man as a whole pursuant to §8(d) (2) of the Act, 125 weeks, payable at $998.02 per week.

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

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



Signature of Arbitrator

JANUARY 20 2026

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Shawn Curry

Petitioner testified that his employment began with the City of Peoria on June 1, 2004, and had worked in the positions of patrol officer, detective and sergeant. Petitioner testified that his job duties as a patrol officer included responding to calls, patrol work, and traffic enforcement, his job duties as a detective involved case work, case management, and less time out on the streets, and his job duties as a sergeant included supervising officers, administrative work, and approving reports. He said he worked as a detective from about 2008 to 2018, at which time he became a patrol sergeant, supervising other officers, most of whom were younger. Petitioner testified that he had never been diagnosed with PTSD or disciplined during his career with Respondent. (TR 24-29)

Petitioner testified that prior to October 3, 2022, in 2016 and 2017, he had been treating with his family doctor for depression. Petitioner further testified that he and his ex-wife were going through marriage counseling, and individual counseling, eventually getting divorced. (TR 31)

Petitioner testified that on October 3, 2022, was at the police station, doing administrative duties and speaking with other shift sergeants in preparation for his shift, when multiple shot spotter alerts came in. Petitioner said a shot spotter alert is a sensor placed around parts of town where, if gunshots are fired, it will alert all officers via their radios before anyone calls 911. Petitioner said he heard a rookie officer that he supervised state over the radio that a foot chase was taking place between himself and the suspect. Petitioner testified that he immediately left the police station to assist the officer, who was about a mile from the police station, and in his rush to do so he left behind his equipment including his body camera, bulletproof vest, duty bag and nightstick, as he had not yet unloaded them from his personal vehicle. (TR 23-33, 36-39).

Petitioner testified that the officer reported additional shots fired while Petitioner was en route to the scene. Petitioner said the original radio call came from McBean at the end of a park, but while Petitioner was en route, the officer radioed that the suspect was heading towards a fence near Village Green. Petitioner testified that as he is turning onto Village Green, he observed a big volley of gunfire, 30 to 40 shots, and muzzles flashes to his left. Petitioner further testified that it was dark, making it difficult to identify individuals. He said he saw the silhouettes of officers and muzzle firing. Petitioner testified that he moved his car to provide cover for fellow officers during the active shooting. He said he did not know at that time how many active, non-police shooters there were. (TR 41-42, 45, 47)

Petitioner testified that he got out of his car and saw the suspect moving around on the ground. Petitioner said command orders were given to the suspect during this time “show your hands” and “don’t move,” and at this point the suspect still had a gun and was moving. Petitioner testified that he got a ballistic, bulletproof shield out of the back of his car, and he and the three officers made a line, behind the shield and together approached the suspect, secured his gun, and administered first aid to the suspect. Petitioner said that at that point he did not

know if they were dealing with more than one person, so he stood next to the officers administering aid, watching for other potential suspects. Petitioner said he watched the suspect die while he was being administered CPR. (TR 49-52)

Petitioner testified that he checked on his officers and then reported back to the station to provide precursor information to the department. He said that while at the station he was placed in a separate room, was there for two to three hours, that the assistant chief of police, Brad Dixon, came in, and an argument ensued. Petitioner said he was upset, about what had happened, and was stressed. He said traditionally there would have been 18 officers working the streets, but that night they only had 11 or 12, including a new officer. After the argument the assistant chief left and then five or ten minutes later came back with a patrol captain, Mike Clark. He said they told him he needed to calm down. He said he was ordered to go home. Petitioner testified he did not sleep that evening, and while he was to participate in training after his shift, he called and canceled his training, as the assistant chief told him he was not to attend, he was on critical incident administrative leave. He said that after that night he experienced sleeplessness and emotional distress. Petitioner said that from October 4, 2022 to October 16, 2022, he was placed on administrative leave with pay. (TR 54, 57-59)

Petitioner testified that at some point between October 4 and October 16, 2022, while he was on administrative leave, he spoke with Administrative Captain McCall, and Captain McCall told Petitioner he was to report to a Dr. Campion in Champaign. He said Dr. Campion did all of Respondent's psychological testing, and he believed Dr. Campion was a psychologist. He said he was to talk to Dr. Campion about the issues he was having with this event. He said he went to see Dr. Campion, and he then received a telephone call from Captain McCall asking if he had attended that appointment and he told him he had. During that call Captain McCall told him they needed him to return to duty as soon as possible. Petitioner said that on October 17, 2022 he wrote an email, Petitioner Exhibit 11, to Captain McCall, with a carbon copy to Captain Clark. Petitioner said Dr. Campion had told him that he wanted to follow up with him for 3 or 4 treatment sessions. (AT 61-66)

Petitioner testified he returned to work on October 17, 2022, but left early because he was still struggling with his symptoms. The Petitioner testified that he began to self-isolate and had issues concentrating. He agreed that additional records indicate he worked on October 18 and 23, 2022, and was on sick leave on days in between and after those dates. Petitioner said he then worked from October 26, 2022 through March 15, 2023, but was self-isolating during that period of time, entering through different entrances, not engaging with the other sergeants, and going to another office to do his work. He said when shot spotter alerts came in he would freeze up and have to push to respond with his thought process being delayed. He said he also had issues with his concentration. He said that during this period of time he would see his family doctor, who prescribed him different medications to get him back on track, and who eventually referred him to a psychiatrist, Dr. Heritch, who he saw in January of 2023. He said Dr. Heritch changed his medications and recommended he see a psychologist for verbal therapy. (TR 76-80)

Petitioner testified that he took a sick day on March 15, 2023, and then was to meet with the chief of police on March 17, 2023 to explain to him what was going on with him. He said the police chief canceled that meeting. He said he met with human resources, who told him he needed slips from his doctors, and he got slips from his family doctor, his psychiatrist, Dr. Hiritch and from a psychologist, Dr. Stivers. He said he returned to light duty

work on March 23, 2023 through May 31, 2023. Petitioner said that while on light duty, he would leave work early many times. He said he filled out a statement on March 27, 2023 at the request of Respondent. (TR 82-83)

Petitioner testified that he communicated his issues with his psychiatrist, and the recommendation was made to have Petitioner taken off work completely, beginning on about June 1, 2023. Petitioner said he was paid Public Employee Disability Act benefits tax free for one year from June 1, 2023 to June 1, 2024. Petitioner testified that he was treating with Dr. Heritch and Dr. Stivers. The treatment the Petitioner was undergoing was one on one therapy and EMDR, which involved his holding handgrips while speaking with the doctor and impulses from them interacting with his brainwaves in some manner. Petitioner said that during this period of time he was still experiencing sleeping issues, high levels of anxiety, temperament issues, and emotional issues. (TR 86-90)

Petitioner said he filed for line of duty benefits on of April 17, 2024, as his family doctors no longer felt comfortable with his doing police work. He said he was awarded pension benefits effective October 1, 2024, and he had used his sick and personal time from June 4, 2024 – October 1, 2024. He said the Pension Board had him examined by three independent doctors, and Respondent had him undergo an IME by Dr. Campbell, as well. He said Dr. Campbell did not release him to return to work, and recommended further care and treatment. (TR 90-92)

Petitioner testified that his yearly earnings for the year predating his work injury were $119,733.50. Petitioner testified that he was not working from June 4, 2024 to March 16, 2025, but he obtained a new job on March 17, 2025 with the Illinois Police Officers Pension Fund, having received his line of duty disability benefits prior to his starting that job. He said his job duties in that job include reaching out to pension trustees and explaining investments earnings, and he earns approximately $124,000.00. (TR 93-95, 145)

Petitioner testified that he did not apply for or provide information to the Fraternal Order of Police in regard to an award relating to the shooting incident of October 3, 2022. Petitioner said he was given an award for said event from the Fraternal Order of Police, advised them that he did not want to accept it, but it was awarded to them anyway. (TR 96-97)

Petitioner said that at the date of trial, he still experiences depression, sleeplessness, and emotional highs and lows. He said he still takes medication which helps to level him out, at times it makes him feel foggy. (AT 97). Petitioner further testified that he continues to manage the emotional and psychological effects of the shooting incident (TR 97-98)

On cross-examination, Petitioner testified he prepared and submitted the resume contained within Respondent's Exhibit 4, and had listed the 2022 Illinois Fraternal Order of Police Valor Award on his resume. He said he recalled a statement being read at a luncheon prior to receiving the Award in-person in December of 2022, that he had not been given a copy of that statement, and that after receiving the award, he informed the Fraternal Order of Police that the information read was not exactly accurate, and that he did not feel comfortable accepting the award. He said they basically just told him to take the award. (TR 100-105, 108)

Petitioner testified that during the October 3, 2022 incident, he believed the suspect fired at the responding officers, but he noted the article in Respondent Exhibit 6 was not accurate, he had not drawn the subject's fire and his vehicle did not sustain two bullet holes from the suspect during that incident. He said he took part in the

subsequent investigation but did not have all of the information, noting that he did not find out for several months that it was a case of suicide by cop. He said that as he approached there was a large volley of gun shots, to 40, but by the time he arrived the suspect was on the ground, and Petitioner himself was not shot at during the incident. He said he was concerned that there could be more people involved than just the one suspect, so he remained vigilant on the scene as others could be involved. (TR 109-117)

Petitioner acknowledged the young officers at the scene on October 3, 2022, including Officer Fuller, did outstanding police work. He said none of the other officers present had as much experience as he did. He further testified as of the time of arbitration, he was proud of the police work performed that evening. (TR 120-122)

Petitioner testified he was seeking benefits as a result of a singular event, the October 3, 2022 incident. He acknowledged he signed an employee accident report, Respondent's Exhibit 1, on March 27, 2023. He had not provided a report of a work-accident to Respondent at any time prior to March 27, 2023. (TR 122-124)

Petitioner acknowledged he served as a trustee on the Peoria Police Pension Fund from January 2010 through May of 2024,at one point as chairman of the board, with the board overseeing pension payouts, transferring assets from investments to pay retirees, and presiding over disability hearings for police officers. He said he did not preside over his own disability hearing. He said he was no longer a member of that board, ceasing to serve on the board in May of 2024. Petitioner understood he was required to reimburse the Pension Fund for any temporary total disability benefits he received after he began receiving line-of-duty disability pension benefits on October 1, 2024. The parties stipulated that Petitioner was paid by Respondent, either as wages, sick time, or personal time off, until October 1, 2024 when he received a line of duty award and began receiving benefits from the pension board. (TR 125-129)

Petitioner acknowledged that he sought treatment and was prescribed medication for sleeping issues prior to the alleged October 3, 2022 accident, but that his current sleep problems were different. (TR 130)

Petitioner testified that he had advocated for mental health issues experienced by police officers prior to October 3, 2022, including writing legislation. He said he had also participated in discussions, conducted studies, and written articles regarding mental health issues involving police officers prior to the October 3, 2022 accident, assisting Dr. Michelle Lilly, a psychologist. It was noted Dr. Lilly was Petitioner's wife as of the date of arbitration. (TR 130-142)

Petitioner said his last treatment from Heartland Behavioral Health would have been on approximately April 7, 2025 and his last visit with Dr. Stivers was in the Spring of 2025. At the time of arbitration, he had not returned to treatment and was having his medications managed by his family doctor. Petitioner stated he did not seek any treatment with a psychiatrist between his discharge by Dr. Campion on October 13, 2022 and March of 2023. He agreed he reported for full-duty police work as a sergeant for Respondent from October 25, 2022 until March of 2023, when he was placed on light duty. He did not request to be taken off-work during this timeframe, though he said there were times when he would just freeze, such as when a shot spotter alert came in, or he would just have a blank stare while other officers were talking to a suspect. (TR 146-156)

Petitioner acknowledged being a homicide detective and responding to violent crime, including shootings and ShotSpotter alerts, prior to the alleged October 3, 2022 accident. He also responded to these types of events as a sergeant, supervising other officers, prior to October 3, 2022. He said Peoria is a violent area, with different

types of violent crime. He said the incident of October 3, 2022 was different, however, as it was the first time he had officers lured to an ambush, with a person using the shot spotter alert system to lure officers into the park wo he could engage with them with a firearm as part of a suicide by cop. (TR 159-164)

Petitioner testified that Dr. Stivers wanted him to return for additional ENDR treatment in the future, after a "break and reset," to help Petitioner be less temperamental. (TR 165-166)

On redirect examination, Petitioner testified that Dr. Campion was not his treating physician, he was the doctor the Respondent sent him to. (TR 168)

Petitioner was asked a number of questions by the Arbitrator, and said that while there is potential for violence and danger every day he would go to work as a police officer, this was the only incident he had responded to which involved 30 to 40 shots and an active shooter. (TR 168-169)

Andy Steck

Steck testified that he is a sergeant with the Farmington Police Department, and a member of the Spoon River Valley Fraternal Order of Police Lodge 427. Sergeant Steck testified that the awards chair, Jerry Leib, nominated Petitioner for the award. (TR 171-173)

Donald Hackett

Mr. Hackett testified that he is a retired deputy sheriff for the Fulton County Sheriff's Office. He testified that he is currently the president of Lodge 427, and he nominated Petitioner for a Valor award. He said he saw news coverage of the shooting and called over to the Peoria Police Department to see if any of the members had been involved. Mr. Hackett testified that he spoke with Petitioner, who gave a brief description of the shots fired call coming in, he drove his squad car into a park, in between the shooter and officers who were taking fire, and it looked like the squad car would have been hit by bullets. He said he knew that for this shooting there would be an investigation, so he did not ask Petitioner a lot of questions. He said he then nominated Petitioner for a Valor award, sending the form to Jerry Leib, the State FOP Award Committee chairman, who approved the award. He noted Petitioner was very reluctant to receive the award. (TR 181-184)

On cross-examination, Hackett testified that in the time he has known the Petitioner, he finds him to be very honest. Hackett further testified that the Petitioner did not know he was going to receive the award. Petitioner attended the event, Mr. Hackett called him up, the award was presented to him at that time, and Petitioner was embarrassed and told him he did not want the award. (AT 187-188).

Dr. Michael Easton

Dr. Easton was deposed as a witness by Petitioner on December 13, 2024. Dr. Easton is a board-certified psychiatrist and psychologist. Dr. Easton testified that he has treated patients that suffer from post-traumatic stress disorder (PX 7 p. 10)

Dr. Easton testified that he was hired by the City of Peoria pension board to examine the Petitioner on August 16, 2024. Dr. Easton testified that he reviewed all the medical records and documentation prior to the exam date. Dr. Easton testified that the Petitioner provided a history of the work accident and the symptoms/issues he was experiencing. (PX 7 p. 15-17)

Dr. Easton testified that he provided the Petitioner with a diagnosis of post-traumatic stress disorder, which is directly related to the work accident of October 3, 2022, that the condition is permanent, and that the Petitioner wa precluded from returning to unrestricted police work. Dr. Easton identified symptoms that are consistent with post-traumatic stress disorder, those include sleeping problems, trouble remembering key details, problems concentrating, difficulty making decisions, avoidance, negative thoughts, anger, fatigue, nightmares and flashbacks, avoidance, on edge, irritability, and easily startled. (PX 7 p. 21-23)

Dr. Easton noted that PTSD was treatable, but not curable, that symptoms could be controlled and even could resolve, but that did not eliminate the risk of reoccurrence as this was a chronic brain disorder, a change in the firing patterns between different brain systems. (PX 7 p.62-64)

Dr. Easton was of the opinion that it was highly unlikely Petitioner would be able to return to unrestricted police work. (PX 7 p.66)

Dr. Geoffrey Shaw

Dr. Shaw was deposed as a witness by Petitioner on February 6, 2025. Dr. Shaw is a board-certified psychiatrist. Dr. Shaw testified that he has treated patients that suffer from post-traumatic stress disorder, anxiety and depression (PX 8 p. 10-12)

Dr. Shaw testified that he was hired by the City of Peoria pension board to examine the Petitioner, and did so on August 26, 2024. Dr. Shaw testified that he reviewed all the medical records and documentation prior to the exam date. Dr. Shaw testified that the Petitioner provided a history of the work accident and the symptoms/issues he was experiencing. (PX 8 p. 13-18)

Dr. Shaw testified that he diagnosed the Petitioner with post-traumatic stress disorder, which is directly related to the work accident of October 3, 2022, that the condition is permanent, and that the Petitioner is precluded from returning to unrestricted police work. He believed any further attempt to perform police duties, even those which were light duty, would result in an exacerbation of his PTSD, and would expose him, his co-workers, and the general public to potential harm, as he would have the potential of being involved in confrontational situations and potentially be unable to perform his duties. He noted that even performing light duty work, away from the public, caused him to suffer symptoms. (PX 8 p. 21-22,25-26,40,49)

Dr. Shaw believed Petitioner would continue to require medical treatment, including psychotherapy and medication. He said Petitioner's disability was due to his PTSD, which did not exist prior to October 3, 2022. He noted that Petitioner would at some point be capable of performing work that did not require him to carry a firearm or engage in confrontational situations. (PX 8 p.27,50)

Video Evidence

Petitioner Exhibit #10 is a USB flash drive identified as "Officer Fuller Body Cam." It contains video approximately 22 minutes in length, beginning in a very dark outdoor area where the police officer is searching for a person, periodically using a flashlight. A person is found a good distance in front of the officer, by a tree. The officer notes he sees a gun and repeatedly tells the person to drop the gun. What appears to be one or more muzzle flashes and sounds of a gun being fired come from the area of the person by the tree. Multiple gunshots appear to be shot by the person with the body camera, and others near and behind him. The person by the tree appears to be kneeling and the officers again tell him repeatedly to put down the gun. While it cannot be verified by the video, the officers note he has not put the gun down, and it appears that person again fires a weapon, immediately followed by numerous gunshots from the area of the officer with the body camera, in the apparent direction of the person by the tree. All shooting ceases, and after a minute or two a ballistic shield is provided to another officer who walks toward the person by the tree, who is now on the ground, and another officer follows the officer with the ballistic shield. The officer with the body camera does not immediately approach the person by the tree, but stands next to a police vehicle, with the vehicle blocking view of the area where the person is on the ground. Many other officers have arrived, and the officer wit the body camera joins a group of about eight officers surrounding the person on the ground. A person is heard crying on the video, and based on the movement of the person wearing the body camera and the continued crying, it is thought that the crying is from that person.

Many officers have arrived at the scene, and multiple officers speak to the officer with the body camera and he explains where he was when he saw the person by the tree, that he told him to put down the gun, that the person fired towards him, and he took several gunshots towards the person. One officer told another officer to drive the person with the body camera to the police station, and he did so. The body camera was turned off upon entry to the police station.

Police Reports Referring To Petitioner's Actions On October 3, 2022

Respondent introduced police reports generated due to the shooting incident of October 3, 2022, Respondent Exhibit 2. All of these reports are consistent in regard to the shooting event itself, and are consistent with Petitioner's testimony about the shooting event.

Officer Fillpot's report does not mention Petitioner. (PX 2 p. 2)

Officer Fuller's report describes the actions through the firing of guns by the person by the tree and police officers, and then states, "By this time, Sgt. Curry arrived on scene and officers took cover behind his PPD Tahoe. Ofc.Marx, Ofc. Heaton, and Sgt. Curry approached Richmond with a shield and secured him. Officers called for medics for Richmond and officers on scene attempted life saving measures on Richmond." (RX 2 p.5)

Officer Marx's report notes that, "Sgt. Curry who was on scene provided a shield." (RX 2 p.7)

Petitioner's report, dated October 3, 2022 at 10:05 PM, is consistent with his testimony but includes names and locations with more specificity than his testimony. (RX 2 p.9-11)

Officer Heaton's report describes the details of the shooting incident and then states, "The male was then given multiple commands to put his hands up, but he did not comply. Sgt. Curry then arrived and I took a position of cover behind his squad car. Sgt. Curry then provided me with a ballistic shield. * * * I then approached the suspect while holding the shield in my left hand and my sidearm in my right." He then noted his observations of the body, the person's handgun, and medical aid being rendered. (RX 2 p.13-14)

Officer Faulkner's report reflects that he arrived after the shooting, checked a white Malibu vehicle with its motor running in the middle of the park and, "checked the area around the vehicle at the direction of Sgt. Curry for additional evidence." (RX 2 p.39)

Officer Rummans' report states that he arrived after the individual was being rendered medical aid, and "I first spoke with Sgt. Curry. I asked Sgt. Curry if all officers were accounted for. Sgt. Curry stated that they were. I asked Sgt. Curry how many suspects were involved. Sgt. Curry stated he only knew of the one suspect. I asked Sgt. Curry which officers were involved in this incident. Sgt. Curry told me Officers Fillpot, Marx, Heaton, and Fuller were involved."

Numerous other reports were included in the exhibit but involve officers who were not present during the shooting incident and do not mention Petitioner.

MEDICAL EVIDENCE

On October 10, 2022, Petitioner was seen at OSF Glen Park by Nurse Practitioner (NP) Stephens with complaints of trouble sleeping, noting that this followed an incident at work the previous week. He noted that after he would fall asleep, he would wake up and his mind would not "shut off," and he had trouble falling asleep, resulting in his only sleeping for a few hours at a time. He noted he had issues with sleep five years earlier and had taken trazodone, which appeared to help. He also noted that he had seen a psychiatrist in the past and had received counseling and might look into that again. A prescription for trazodone was given to Petitioner, and that prescription was later refilled on January 12, 2023, with an additional prescription for Wellbutrin also given on that later date. A list of counseling services was also provided to him on October 10, 2022. (RX 8 p.9-10,13)

Psychologist Thomas Campion saw Petitioner for a Critical Incident Stress Debriefing on October 13, 2022, and reported to Respondent that Petitioner was cooperative and discussed the situation in a descriptive manner. He said Petitioner appeared to be fairly self-aware of his emotion. Dr. Campion said he provided Petitioner with educational information about managing traumatic events. He felt Petitioner appeared ready to return to work. Dr. Campion forwarded his bill for this examination to Respondent. This appears to be the only office visit Petitioner had with Dr. Campion. (PX 4 p.8-9; RX 3)

Petitioner was seen by Dr. Heritch, a psychiatrist, on January 26, 2023. He was seen for psychotherapy to deal with symptoms he was experiencing following a fatal shooting of a suspect. The history recorded by Dr. Heritch was of Petitioner being involved in an October 3 shooting incident, with the perpetrator being dead when he arrived at the scene. Petitioner was complaining of sleeping problems, anxiety, and anger issues. It was noted that he was sensitive to hearing gun shots and worried about "the guys under him," as well as his family.

Dr. Heritch diagnosed Petitioner as suffering from Post Traumatic Stress Disorder (PTSD). He modified Petitioner's medication prescriptions, and counseling was recommended. (PX 2 p. 23-24)

On February 23, 2023, Petitioner advised Dr. Heritch that he was a little more rested. He noted that he had gone on a cruise vacation to the Caribbean, but did not like the crowds. He was to start counseling the following Monday. Dr. Heritch felt he was a bit improved on this date. (PX 2 p.22)

Petitioner was seen by psychologist Ryan Stivers on February 27, 2023, as he had been encouraged to do so by his family physician and his psychiatrist. Dr. Stivers recorded a lengthy and detailed history of Petitioner's past and his feelings after the incident of October 3, 2022, including his difficulties dealing with his work and other police officers after that incident, and the many worries he had about losing officers or harm coming to his daughters. Dr. Stivers noted Petitioner met the criteria for PTSD and was likely depressed. Weekly treatment sessions were planned. (PX 3 p.6-7)

When seen by Dr. Stivers on March 6, 2023, Petitioner said he was afraid his symptoms might interfere with his work, and he was losing sleep worrying about that. The therapist gave Petitioner suggestions on how to deal with his concerns. EMDR therapy was mentioned, and they were to discuss it at Petitioner's next session. Petitioner continued to get weekly therapy throughout March of 2023. During this time Petitioner voiced concerns about his being placed on modified duty and a feeling that his employer was trying to push him out. (PX 3 p.8-15)

Dr. Heritch saw Petitioner on March 23, 2023, and noted Petitioner had increased irritation secondary to frustrations at work, and was using sick time for treatment. Petitioner noted he had some hesitancy in high stress situation. Petitioner's diagnoses were PTSD, acute stress, and adjustment disorder. He was restricted from street work through April of 2023. (PX 2 p.21)

During his April 2023 sessions with Dr. Stivers, Petitioner voiced intrusive thoughts about his work situation and the incident of October 3. Petitioner said he was trying to walk more, and that his wife was trying to get him out of the house more. Petitioner felt good about getting transferred back to third shift at work, but noted he became angry when he listened to incidents, and when he thought about how vulnerable rookie officers were, and that he became angry with himself when he had these stress reactions. During some sessions Petitioner was tearful and said he felt shame for his struggles. Dr. Stivers noted that Petitioner was struggling with survivor's guilt. (PX 3 p.16-21)

When seen by Dr. Heritch on April 24, 2023, Petitioner said he had started EMDR therapy and planned to extend his time off to get more treatment. He also noted that he had been placed on a different shift and made fun of for having PTSD. (PX 2 p.20) On May 1, 2023, Petitioner told Dr. Heritch that he had gotten some benefit from EMDR, but had setbacks due to returning to work, requesting a letter to release him from duty for a period of time. (PX 2 p.19)

Dr. Stiver's May through September 2003 office notes were quite similar to the April notes, with him worrying about the safety of other officers, having difficulty sleeping, even with the help of medication, and had stepped down from a work committee to proactively manage stress. He said even co-workers reaching out to him triggered symptoms. (PX 3 p.22-51)

On June 29, 2023, Petitioner told Dr. Heritch that it was unclear if Zoloft was helping much. He said he still had concerns with impulse issues. He said he would consider a return to work as soon as September, as he intended to ramp up his EMDR treatment in August. (PX 2 p.18)

Dr. Heritch continued to see Petitioner in July, August, and September of 2023, with continued complaints of increased emotional and irritability. He also noted that he had been "locking up" on the job earlier in the year. It was felt he was gradually improving. (PX 2 p.15-17)

On September 18, 2023, Petitioner told Dr. Stivers that his command was intending to suspend him due to inadequate supervision in February, which had led to an escalated incident. He noted that his body cam had been upside down, and he was slow to respond at times during the incident, that he was being accused of becoming incompetent. He said he felt hurt and angry due to this. He said he had asked command for help in December, but they did not respond to his request. He said he consulted with an attorney, and then accepted the suspension in an effort to move past emotional pain. He said he had again been losing sleep due to intrusive thoughts. (PX 3 p.52-53)

By November 15, 2023, Dr. Heritch was noting some worsening in Petitioner's PTSD, with stress. (PX 2 p.14) Petitioner advised him on January 11, 2024, that he was still having "ups and downs," but they ere decreased on Zoloft, though he felt his thinking was a little slowed down. Petitioner reported to him that his counselor felt he should find another job. On April 3, 2024, Petitioner told Dr. Heritch that he was doing about the same, that the department did not seem to want him back, and his counselor would not release him back to full duty police work. (PX 2 p.12-13)

Dr. Stivers's office notes for visits in November and December of 2023 continued to note Petitioner having problems dealing with normal activities, including social situations. (PX 3 p.54-73)

Petitioner on January 16, 2024 told Dr. Stivers of several anxieties he was experiencing, and of his starting to work on his resume, which was "highly triggering," as it was like reading his life story, and he felt angry with his current situation and comparing his present self with his younger self. Dr. Stivers saw him again six days later, on January 22, 2024, after Petitioner had an encounter with a retired office who commented on Petitioner's mental health and mocked his need for mental health support. Petitioner said he let his emotions get the best of him during this encounter. (PX 3 p.2-4)

Petitioner continued to see Dr. Stivers regularly from February through September of 2024, having similar complaints as those noted at earlier visits. He later missed some therapy sessions due to conflicting forensic evaluations of him, fitness for duty evaluations for his pension. These took place in Chicago. Other absences were due to his mother-in-law dying. He advised Dr. Stivers that all of the evaluations had found his PTSD to be present and due to his work, and found him not to be fit for duty. Petitioner noted he felt like he was able to consider his future at this point. (PX 3 p.74-113)

Petitioner told Dr. Hertich on July 3, 2024 that he had put in papers for disability, that he had stress, but was managing. (PX 2 p.11) When seen on October 24, 2024, Petitioner advised Dr. Heritch that he had been stressed while going through the disability process, but had gotten disability. He was gearing up to look for a new job, and planned on restarting EMDR therapy. Dr. Heritch felt Petitioner's PTSD was reasonably stable at that time, and he had the same opinion when he next saw Petitioner on January 16, 2025. (PX 2 p.9-10)

Petitioner continued to see Dr. Stivers through December 16, 2024, at which time he recounted his going to a job fair, which was discouraging. He said he intended to attend a union holiday party, but chose not to do so, which caused his wife to be upset with him. (PX 3 p.114-126)

Dr. Heritch last saw Petitioner on April 7, 2025, with Petitioner advising him that he had started a job with the Illinois Police Pension Fund two weeks earlier. Dr. Heritch again felt Petitioner's PTSD was mostly stable, but he was to continue taking medication and getting supportive therapy. (PX 2 p.8)

At Respondent attorney's request, Petitioner underwent a psychological evaluation by Dr. Campbell on August 5, 2025. In his 30 page report, Dr. Campbell noted he took a lengthy history from Petitioner, along with a list of current complaints. He then summarized Petitioner's job descriptions, pre-incident records both work and medical, body cam video of the October 3, 2022 incident, from multiple officers, all in area of time prior to, during and after gunshots occurred, some including Petitioner. Also reviewed many criminal reports authored by police officers about the incident, and after incident reports including a report noting four officers had to be evaluated by Dr. Campion, including Petitioner, and an internal investigations report about the incident. Also included October 10, 2022 report of Nurse Practitioner Stephens, who recorded Petitioner noting the incident which had occurred at work and his having problems sleeping. She provided him with a list of counselors. He also reviewed records of Drs. Heritch and Stivers. He also reviewed examination reports from Dr. Gordon, a psychiatrist who examined Petitioner on August 9, 2024, and found him to be suffering from PTSD which was related to the October 3, 2022 incident, which rendered him unable to perform full, unrestricted duty. He also reviewed an evaluation report of Dr. Easton, another psychiatrist, who examined Petitioner on August 16, 2024, who had similar findings and opinions to those noted by Dr. Campbell. He also reviewed another evaluation report of Dr. Shaw, another psychiatrist who evaluated Petitioner on August 5, 2024, and he, too, had findings similar to those of Drs. Campbell and Easton, again diagnosing Petitioner with PTSD which prevented him from performing full, unrestricted police work, and was related to Petitioner's work incident of October 3, 2022. Dr. Campbell examined Petitioner and performed tests with him. While Petitioner appeared non-distressed during his examination, except for when, during the interview, he had situation-specific distress about the incident and his symptoms. A test was performed to determine if Petitioner's voicing of his symptoms was valid, and they indicated his psychological tests were valid for interpretation, though he may have, in some areas have portrayed himself as more symptomatic than was the case. Dr. Campbell said Petitioner said his test results, as well as the other information available, suggested Petitioner had Major Depressive Disorder (MDD) and PTSD, and that many of his symptoms were partially related to the October 3, 2022 incident. He noted Petitioner had pre-existing MDD for a year prior to this incident, but prior to October 3, 2022 he was functioning in a normal capacity at work and in the community, but currently his symptoms affected his ability to maintain his typical lifestyle. He felt Petitioner's medical treatment was reasonable and necessary based upon his symptoms, and that he would continue to need further medical treatment. (PX 5 p.1-30)

ARBITRATOR CREDIBILITY ASSESSMENT

The Arbitrator finds Petitioner's testimony to have been credible. His testimony as it relates to the accident on October 3, 2022 was consistent, and supported by the police reports contained in Respondent Exhibit's 2. Petitioner's testimony regarding his complaints and condition of ill-being are supported by the

medical records in this case. Respondent's IME physician found he Petitioner to be credible. There is no evidence in the records of any symptom magnification by the Petitioner. The Arbitrator gives very little weight to the minor differences in medical records as the records are not generated by the patient and are subject to memory lapses by the recording medical provider. The Arbitrator gives no weight to the differences in history contained in the Fraternal Order of Police Valor Award, as it was generated based in part on a television news report and Petitioner objected to the award as soon as it was presented.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on October 3, 2022, the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

A "mental-mental" injury occurs when there is no physical trauma. The standard for compensability of a "mental-mental" claim is if the psychological injuries are caused by a sudden severe emotional shock traceable to a definite time, place and cause, even though no physical trauma or injury was sustained. Pathfinder Co. v. Industrial Commission, 62 Ill. 2d 556 (1976). Additionally, recovery for non-traumatically induced mental disease is limited to those employees who can establish that: (1) The mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) The conditions exist in reality from an objective standpoint; and (3) The employment conditions, when compared with the non-employment conditions were the major contributing cause of the mental disorder. Runion v. Industrial Commission, 245 Ill.App.3d 470 (5th Dist. 1993).

On October 3, 2022, there was a fatal shooting of a suspect by several Peoria Police Officers. Petitioner was a police officer whose duties included supervising these officers. Petitioner's unrebutted and credible testimony establishes that he arrived at the scene while the emergency with the fellow officers was still occurring, and he observed a volley of between 30 and 40 gunshots being exchanged between the suspect and the police officers. The Petitioner used his squad car to shield fellow officers from the suspect who had a gun on his possession, close enough to the line of fire that one of the police officers noted he took shelter behind Petitioner's vehicle. Petitioner provided the police officers with a ballistic shield and joined the fellow officers in the approach of the suspect, while the suspect was still a threat. The Petitioner watched the suspect die, as a result of the gun fire he received from the officer's firearms. He continued to keep watch as the other officers provided medical assistant to the suspect as it was unknown whether Petitioner was acting alone.

Petitioner testified that he had not previously been involved in any altercation where 30 to 40 gunshots had occurred. Petitioner testified to how this incident affected him in the days, weeks, months and years after it occurred. He began having symptoms within a week of the shooting, as shown by his seeking medical treatment on October 10, 2022 due to sleep disturbances, giving a history of the shooting at the time of that emergency room visit.

All of the treating doctors and examining physicians opined that Petitioner's PTSD is related to the incident of October 3, 2022.

Petitioner has established that this incident of October 3, 2022 was a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience, greater than even police officers usually experience, and the conditions, including numerous gunshots in his vicinity, and the violent death of a person in his vicinity, which he witnessed, existed in reality from an objective standpoint, and the employment conditions of October 3, 2022, when compared with the non-employment conditions of his life, and were the major contributing cause of his mental disorder.

The Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of the employment by the Respondent on October 3, 2022. This finding is based upon the testimony of Petitioner, the police reports and body camera video, and the medical evidence summarized above.

In support of the Arbitrator's decision as to whether timely Notice of the accident was given to the Respondent the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident, above, are incorporated herein.

For a workplace accident to be compensable, an employee must provide notice to the employer. Proper notice should provide the place of accident and approximate date. Notice must be given as soon as is practicable, but no later than 45 days after the accident. A claimant is barred from making a claim based on lack of notice in cases in which no notice at all is given.

The Workers' Compensation Act further states that: "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy."

The purpose of the notice requirement of the Act is to enable an employer to investigate the alleged accident. The notice requirement is met when the employer possesses known facts related to the accident. Tolbert v Illinois Workers Compensation Commission, 2014 IL App (4th) 130523WC.

Petitioner testified that he gave notice to administrative Captain McCall. Petitioner gave the Respondent notice of his symptoms withing 45 day of October 3, 2022. After this traumatic event, Respondent sent the Petitioner to a psychologist, Dr. Campion. Respondent through Captain McCall, wanted Petitioner to return to work almost immediately after he saw Dr. Campion, but Petitioner advised Captain McCall via email (PX 11) that Dr. Campion had made recommendations for things he should do prior to returning to work. Petitioner then texted Dr. Campion and noted he would be willing to drive to Champaign a couple of times to "make sure I'm back on track." (PX 12) Petitioner testimony at arbitration that Dr. Campion had told him that he wanted to follow up with him for 3 or 4 treatment sessions is consistent with those exhibits. At arbitration, Petitioner testified that he returned to work on October 17, 2022, but left early because he was still struggling with his symptoms, that he began to self-isolate and had issues concentrating, that he took sick days on October 18 and 23, 2022, and

was on sick leave on days in between and after those dates. He testified that he worked from October 26, 2022 through March 15, 2023, but was self-isolating during that period of time, entering through different entrances, not engaging with the other sergeants, and going to another office to do his work. He said he also had issues with his concentration during this period of time. Petitioner's testimony in regard to all of these matters was unrebutted, Neither Captain McCall nor any other personnel from Respondent's police department testified to contradict Petitioner's statements.

The facts noted above indicate Respondent was aware of the incident of October 3, 2022, Petitioner's participation that evening, and potential psychological harm to Petitioner, all of which indicate they had notice.

If Petitioner's statements and actions constituted defective, or inaccurate notice, Respondent has not been prejudiced, as they have had the chance to fully investigate the Petitioner's claim, as shown by their ability to obtain a Section 12 examination by Dr. Campbel and their ability to collect the exhibits at arbitration and the witnesses they called at arbitration. Respondent submitted no evidence proving prejudice by defective or inaccurate notice.

Respondent had knowledge of the incident that all of the treating physicians and examining physicians agree was the triggering event of Petitioner's PTSD was the accident of October 3, 2022.

The Arbitrator finds that timely notice of the accident was given to Respondent within the time limits set out in the Act. This finding is based upon the testimony of Petitioner, the email to Captain McCall, the text to Dr. Campion, and the lack of any contrary evidence.

In support of the Arbitrator's decision as to whether the Petitioner's condition of ill-being is related to the October 3, 2022, accident, the Arbitrator finds as follows:
The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident and notice, above, are incorporated herein.

No evidence that Petitioner was ever diagnosed with or suffered from post-traumatic stress disorder predating October 3rd of 2022 was introduced into evidence. All of the medical evidence in this case, including Respondent's Section 12 medical examiner, establishes that Petitioner is suffering from post-traumatic stress disorder, and Drs. Campbell, Heritch, Stivers, and Shaw all were of the opinion that Petitioner's PTSD was directly related to this October 3, 2022 work accident. Respondent offered no evidence to the contrary.

The Arbitrator finds that Petitioner's medical condition of Post-Traumatic Stress Disorder is causally related to the accident of October 3, 2022. This finding is based upon the testimony of Petitioner, the medical records and other exhibits introduced at arbitration, and the reports and/or testimony of Drs. Campbell, Heritch, Stivers, and Shaw.

In support of the Arbitrator's decision relating to Petitioner's average weekly wage, as a result of the accident of October 3, 2022, the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident, notice, and causal connection, above, are incorporated herein.

Petitioner stipulated a claim for earnings in the year preceding the date of accident of $119,733.50. (Arb. X 1)

Respondent stipulated a claim for earnings in the year preceding the date of accident of $109,223.69. (Arb. X 1)

Respondent's Exhibit 5 was admitted into evidence, and constitute bi-weekly pay records for Petitioner for his work for Respondent for pay periods ending on October 16, 2021 through October 15, 2022. Three "extra" paychecks are also included as pages 30 through 32 of Respondent Exhibit 5, a second check dated March 5, 2022 in the gross amount of $952.91 for a line item entitled "GUNALL," and two additional checks dated July 9, 2022, the first for a gross amount of $1,453.29, $23.82 for "GUNALL," $9.56 for "RET OT," and $1,419.91 for "RET RG,"and the second being a $5,000.00 check for "BONUS." No testimony explaining these wage records was elicited at arbitration. There are many "types" of earnings listed on each pay record, but with the exception of one $5,000.00 entry entitled "BONUS," the meanings of all the different entries is totally unknown. Section 10 of the Act excludes overtime and bonus pay from average weekly wage. While there are exceptions to the overtime exclusion, the exhibit does not clearly identify any overtime payments, so no amounts are excludible for that reason. There is one $5,000.00 payment clearly titled "BONUS." That amount will be excluded. The total gross earnings included on the pay records in Respondent Exhibit 5, total $127,924.10. After excluding the bonus payment, the annual earning are $122,924.10, and the average weekly wage would therefore be $2,363.92.

Petitioner stipulated to annual earnings of $119,733.50, and an average weekly wage of $2,302.57.

Parties are bound by their stipulations at arbitration. Walker vs. Illinois Industrial Commission, 345 Ill.App.3d, 804 N.E.2d 135, 281 Ill.Dec. 509 (2004).

The Arbitrator finds that Petitioner's average weekly wage while working for Respondent in the year prior to his accident was $2,302.57, resulting in annual earnings of $119,733.50. This finding is based upon the earnings records in Respondent Exhibit 5, the lack of testimony explaining the different entries explaining the breakdown of the wages, the lack of testimony reference overtime, if any, and the binding stipulation by Petitioner at arbitration.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of October 3, 2022, the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident, notice, and causal connection, above, are incorporated herein.

In the Request for Hearing form, Arbitrator Exhibit 1, Petitioner claimed temporary total disability from October 19, 2022 through October 22, 2022, from October 24, 2022 through October 25, 2022, for March 15,

2022, for March 19, 2022, from March 21, 2023 through March 22, 2023, and from June 1, 2023 through March 17, 2025, a period of 94 3/7 weeks. Respondent disputed those periods of disability. (Arb. X 1)

Respondent stipulated that it did not pay any temporary total disability, but did pay full salary to Petitioner from June 1, 2023 to June 2, 2024 pursuant to the Public Employee Disability Act, but did not pay any temporary partial disability, maintenance or other nonoccupational indemnity disability benefits, and Petitioner agreed. (Arb. X 1)

The Petitioner testified that he missed work as a result of this work-related condition for the dates noted above. Respondent did not dispute Petitioner's missing work on those dates, and introduced Respondent Exhibit 7, which indicates Petitioner was off on all of the claimed dates. This testimony was unrebutted by the Respondent. In fact, Respondent's Exhibit 7 confirms these dates.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident of October 3, 2022 from October 19, 2022 through October 22, 2022, from October 24, 2022 through October 25, 2022, for March 15, 2022, for March 19, 2022, from March 21, 2023 through March 22, 2023, and from June 1, 2023 through March 17, 2025, a period of 94 3/7 weeks. This finding is based upon the testimony of Petitioner, the medical records and other exhibits introduced at arbitration, and the reports and/or testimony of Drs. Campbell, Heritch, Stivers, and Shaw.

Respondent is entitled to credit for payment of full salary from June 1, 2023 to June 2, 2024, a period of 52 3/7 weeks, resulting in a net temporary total disability award of 42 weeks at a rate of $1,535.05 per week. Respondent only receives credit for the time periods paid, and not the amount of money paid. City of Joliet v Illinois Workers Compensation Commission 2023 IL. App (3d) 220175WC.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the accident of October 3, 2022, the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident, notice, causal connection, and temporary total disability, above, are incorporated herein.

The medical billing of Heartland Behavioral Health, S.C., for services provided by Dr. Heritch from January 26, 2023 through April 7, 2025, is for psychiatric treatment of Petitioner's PTSD, per the medical records summarized above. The gross amount of billing for said services is $4,825.00. Petitioner paid a co-pay of $25.00 at each visit, totaling $400.00. Insurance paid $1,654.10, for which Respondent gets 8(j) credit, per the stipulation on the Request for Hearing form, Arbitrator Exhibit 1. The remainder of the bill was written off as a contract discount, leaving a balance owing of $0.00. (PX 9 p.5-6)

The medical billing of Summit Family Therapy, PLLC, for services provided by Dr. Stivers from February 27, 2023 through December 16, 2024, is for psychological counseling related to Petitioner's PTSD, per the medical records summarized above. The gross amount of the billing for said services, after subtraction of consultation/collateral contact and letter fees totaling $120.00 is $12,450.00. Petitioner paid a co-pay of $25.00

at each of his 63 visits, totaling $1,575.00. No mention of insurance payments or contractual discounts is included in this billing. If Respondent's insurance paid for a portion of this bill it is entitled to 8(j) credit, per the stipulation on the Request for Hearing form, Arbitrator Exhibit 1.

The medical evidence establishes that the medical care and treatment Petitioner received from these two medical providers was for his PTSD, and is related to the accident of October 3, 2022. There is no medical evidence to the contrary.

The Arbitrator finds that with the exception of consultation/collateral contact and letter fees, all of the bills included in Petitioner Exhibit 9 are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in the October 3, 2022 accident, and are to be paid pursuant to Sections 8(a) and 8.2 of the Act. This finding is based upon the testimony of Petitioner, the medical records and other exhibits introduced at arbitration, and the reports and/or testimony of Drs. Campbell, Heritch, Stivers, and Shaw.

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The summary of testimony, medical treatment and examination findings, deposition testimony and police reports summarized above, are incorporated herein.

The findings regarding accident, notice, causal connection, temporary total disability, and medical, above, are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that 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 Arbitrator notes that the record reveals that Petitioner was employed as a Police Sergeant, a position requiring physical activity and strength, as well as good, speedy judgment. The Arbitrator therefore gives greater weight to this factor, in favor of the Petitioner.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. The Arbitrator therefore gives moderate weight to this factor, in favor of neither Petitioner nor Respondent, as Petitioner is in the middle third of his employment life.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes this is a loss of occupation case. The Petitioner was awarded his line of duty pension disability benefits on October 2, 2024. Evidence of current earnings with the Illinois Police Officers Pension Fund is comparable to his average weekly wage at the time of this accident. No evidence of potential future earnings for Petitioner's employment with the Illinois Police Officers Pension Fund, was introduced via testimony or documentary evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with post-traumatic stress disorder, major depressive disorder, and

anxiety as a result of the October 3, 2022 incident, and the medical records of multiple treating and examining medical providers was introduced, with all of said medical providers finding Petitioner to have continuing symptoms of those disorders. Petitioner only saw a physician for treatment of these injuries three times in the year prior to arbitration, and had not seen a physician for treatment in the six months prior to arbitration. Petitioner testified that he continues to manage the emotional and psychological effects of the shooting incident.

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 25% loss of use of the man as a whole pursuant to §8(d) (2) of the Act, 125 weeks, payable at $998.02 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025895
Case Name	Cale Wine v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0283
Number of Pages of Decision	19
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Aaron Chappell
Respondent Attorney	Aaron Wright

DATE FILED: 10/5/2026

/s/Frank Soto, 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)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CALE WINE,
Petitioner,

vs. NO: 24WC025895

STATE OF ILLINOIS
MENARD CORRECTIONAL CENTER,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causal connection, medical expenses, TTD benefits, notice, and PPD 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, but makes a clarification as outlined below.

The Commission clarifies that Respondent shall pay the reasonable and necessary medical services as outlined in Petitioner's Exhibit 1 related to the treatment of the injury pursuant to §8(a) and §8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 10, 2026 is hereby affirmed and adopted.

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

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

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

OCTOBER 5 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/23/26
FJS/afr
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025895
Case Name	Cale Wine 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	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 2/10/2026

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

FEBRUARY 10 2026

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF FEBRUARY 10 2026 3.50%

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

CALE WINE
Employee/Petitioner

v.

STATE OF IL/MENARD C.C.
Employer/Respondent

Case # **24WC025895**

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 **Herrin**, on **December 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 **August 19, 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 $**84,767.87**; the average weekly wage was $**1,630.15**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of **N/A** for TTD, **N/A** for TPD, **N/A** for maintenance, and **N/A** for other benefits, for a total credit of **$0.00**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services as outlined in Petitioner's Exhibit 1 related to the treatment of the injury, as provided in § 8(a) of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of $**978.09**/week for **110.75** weeks, because the injuries sustained caused the **12.5%** lo**ss** of the **right hand, 12.5%** loss of the **left hand,** the **12.5%** loss of the **right arm** and **12.5%** loss of the **left arm**, as provided in § 8(e) of the Act.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

FEBRUARY 10 2026

PROCEDURAL HISTORY

This matter proceeded to trial on December 8, 2025, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) notice; 3) the causal connection between the accident and the Petitioner's bilateral carpal and cubital tunnel syndromes; 4) liability for medical bills incurred; and 5) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

The Petitioner has been employed at Menard Correctional Center for almost 11 years. (T. 10) He previously worked for Pepsi Mid America and was a pitcher for the Toronto Blue Jays. T. 11) While a pitcher, he sustained injuries to his shoulder. (Id.) He started his career at Menard as a correctional officer trainee and worked 99 percent of his time on day shift. (T. 11-12) He said he worked on a gallery for about eight years, until he became a lieutenant. (T. 12) He said all of his time has been spent in segregation. (T. 12-13)

The Petitioner prepared a Work History Timeline and Job Description. (T. 13, PX7) He reviewed a Job Analysis, video and Post Description prepared by the State of Illinois and agreed with them. (T. 14, PX9, PX10, PX11)

The Petitioner testified that in 2022 and 2023, he had numbness and tingling in his hands and elbows from working a gallery, using Folger Adams keys, performing property box searches, being on the tactical team, bar rapping and being on the computer. (T. 15-16) He said he noticed these symptoms before he became a lieutenant in April 2023. (T. 16, 22)

The Petitioner sought medical treatment on August 19, 2024, from Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics. (T. 16, PX3) He complained of bilateral hand numbness and tingling – on the left in all five fingers with the fourth and fifth being worse and on

the right mostly the fourth and fifth fingers and very minimally in the thumb, index and long fingers. (Id.) He said he had noticed symptoms for at least two years, becoming more constant and painful over the past years. (Id.) He described his work at the Illinois Department of Corrections for the past 9½ years with the first eight years as a correctional officer and the past year and a half as a lieutenant. (Id.) He said he used to do bar raping on a daily basis but did not as a lieutenant. (Id.) He said he said he used Folger Adams keys all day, every day, and spent eight years working on the segregation and tactical teams. (Id.) He reported having no prior injury that resulted in the symptoms he was currently experiencing. (Id.)

Dr. Bradley performed an examination and took X-rays. (Id.) He diagnosed left carpal and cubital tunnel syndromes and right cubital syndrome. (Id.) He gave the Petitioner braces for his left elbow and wrist and instructed him to do a home exercise program and take anti-inflammatories. (Id.) He ordered electromyography and nerve conduction study (EMG/NCS). (Id.) Dr. Bradley opined that the 9½ years the Petitioner worked for the Illinois Department of Corrections – mostly as a correctional officer and being on the tactical team and segregation unit – had at least contributed to his carpal and cubital tunnel syndromes and the need for further work, evaluation, treatment and potential intervention. (Id.)

The Petitioner testified that the braces did not help at all. (T. 17)

The nerve conduction study was performed on September 16, 2024, by Dr. Todd Silverman, a neurologist at the Neurological and Electrodiagnostic Institute. (PX4) Dr. Silverman diagnosed bilateral median neuropathy at the wrist consistent with bilateral carpal tunnel syndrome. (Id.) He found no evidence of ulnar or radial neuropathy or cervical radiculopathy. (Id.)

On September 21, 2024, the Petitioner executed an Employee's Notice of Injury form detailing his injuries and listing a date of injury of August 19, 2024. (RX1)

The Petitioner returned to Dr. Bradley on September 30, 2024, and reported no change in his symptoms. (PX3) Dr. Bradley stated that although the EMG/NCS did not demonstrate any ulnar nerve findings at the level of the elbow, his own examination showed the Petitioner "definitely" had a positive Tinel's test and hypermobile nerve. (Id.) He explained to the Petitioner that hypermobile nerves can oftentimes not be picked up on EMG/NCS. (Id.) Dr. Bradley recommended surgery. (Id.)

Dr. Bradley performed an open left cubital tunnel release with ulnar nerve transposition and open left carpal tunnel release on October 22, 2024. (PX3, PX5) The Petitioner followed up with Dr. Bradley on November 5, 2024, and was "doing great." (PX3) He reported no residual symptoms on the left, but his right upper extremity symptoms were unchanged. (Id.)

On November 13, 2024, Dr. Bradley performed an open right cubital tunnel release with ulnar nerve transposition and open right. (PX3, PX6) At a follow-up on December 2, 2024, the Petitioner reported almost complete resolution of almost all of his symptoms, except for some mild residual tingling on the tip of his right small finger. (PX3) Dr. Bradley returned the Petitioner to full, unrestricted duty and placed him at maximum medical improvement. (Id.)

The Petitioner testified that the surgery helped. (T. 18)

On April 29, 2025, the Petitioner underwent a Section 12 examination by Dr. Patrick Stewart, an orthopedic surgeon at Sarah Bush Lincoln Southern Illinois Hand Center. (RX2) Dr. Stewart reviewed medical records and took a history from the Petitioner, who described his work in the segregation unit on a gallery having 55 cells, cuffing and putting leg irons on inmates when they go out of their cells, unlocking cells with two different locks, bar rapping once per shift taking

five to six seconds per cell, opening padlocks on chuck boxes on 40-50 percent of the cells to pass food, performing shakedowns about 100 times since being on the tactical team since 2016 and performing cell extractions about 30 times over seven or eight years. (Id.)

In his response to a question posed to him regarding causation, Dr. Stewart addressed each of the Petitioner's duties that he had described and said each of these activities would require a limited amount of the total time of any given shift, and there would be adequate opportunity for recovery from a repetitive injury. (Id.) He acknowledged that forceful repetitive activities do place individuals at an increased risk for developing carpal tunnel but do not serve as an aggravating contributing factor to the development of the Petitioner's carpal tunnel because the amount of repetition over the extent of time is a limited exposure. (Id.) He said prolonged and repeated hyperflexion of the elbow or prolonged forceful grasps are the risk factors for developing cubital tunnel, but none of these were alleged as an activity during the workday of a correctional officer or lieutenant and would not contribute to the development of cubital tunnel or hypermobility of the ulnar nerves. (Id.) He pointed out that "a true cubital tunnel" was not evident on the EMG/NCS. (Id.) He said that in relying on Dr. Bradley's physical examination, there appeared to be irritation or possible ulnar nerve neuritis. (Id.)

Dr Stewart also noted that the Petitioner's elevated body mass index (BMI) places him at an increased risk for the development of compression neuropathies. (Id.) He said compression neuropathies have a high percentage of idiopathic etiology, meaning there is not "a smoking gun" as far as the activity, medical problem or disease that has placed the Petitioner at an increased risk or possibly caused the problem. (Id.)

Regarding medical treatment, Dr. Stewart believed the X-rays on the right elbow were reasonable to ensure there was no bony overgrowth or changes from previous surgeries. (Id.) He

did not see a direct indication for X-rays of the left elbow or wrist, as there were no bony complaints, previous injury, recent injury, swelling or ecchymosis. (Id.) As to the right carpal tunnel surgery, Dr. Stewart said indication for the surgery was unclear. (Id.) He noted that the Petitioner had no symptoms after September in his thumb, index finger and middle fingers of the right hand, as well as no provocative maneuvers and a normal EMG except for the comparison of segments of the ulnar nerve to the median nerve. (Id.)

Dr. Bradley testified consistently with his records at a deposition on July 18, 2025. (PX8) He explained that carpal tunnel syndrome is anything that causes the tunnel to get tight, construct and squeeze on the median nerve at the wrist. (Id.) He said it starts with symptoms such as numbness and tingling that are intermittent then become worse and develop into burning. (Id.) He said the same occurs with the cubital tunnel, which is the ulnar nerve. (Id.) He said the carpal tunnel affects the thumb, pointer and long finger, and the cubital tunnel affects the ring and small fingers. (Id.)

Dr. Bradley said there are many factors that contribute to carpal and cubital tunnel syndromes that the Petitioner did not have. (Id.) He said that although the Petitioner had an elevated BMI, he was fit and healthy. (Id.) He said the Petitioner did have 9½ years working at Menard and participating in significant repetitive activities that use both of his hands and both of his elbow. (Id.) Dr. Bradley pointed to daily bar rapping, using Folger Adams keys, doing and undoing multiple locks constantly and carrying property boxes and said there was "really not any other explanation for him developing these symptoms." (Id.)

Dr. Bradley explained that a person can have cubital tunnel syndrome without having a positive EMG/NCS at the elbows because the study does not necessarily pick up nerve instability,

which the Petitioner had. (Id.) He said he sees patients with cubital tunnel syndrome and negative nerve studies every week. (Id.)

Regarding the necessity of X-rays, Dr. Bradley said this is part of the routine workup of a joint – giving a lot of information on what would potentially lead to symptoms, such as bone spurs, fractures, tumors, infection or abscesses. (Id.)

Dr. Bradley testified that during the left carpal and cubital tunnel surgeries, he saw "a bunch of inflammation, scar tissue, stuff like that." (Id.) He said he did not see any other explanation for the conditions, such as bone spurs, tumors or infections. (Id.) He said this was a "run-of-the-mill, kind of chronic, long-developing carpal and cubital tunnel" with a lot of inflammation, scar tissue and adhesions sticking to the nerves. (Id.) He said that after taking the scar tissue off the ulnar nerve, it was very unstable. (Id.) He said his objective findings during the surgeries on the right side were almost identical to the left. (Id.)

Dr. Stewart testified consistently with his report at a deposition on September 30, 2025. (RX3) He said that for a cumulative trauma problem starting to occur, it has to be a preponderance of the day before the assessment – exceeding 40, 50, 60 percent of a given day with those activities being a core part. (Id.) He said that for development of carpal tunnel, activities are vibration exposure, cold exposure, a combination of forceful and repetitive activities and odd positions. (Id.) He said that for cubital tunnel, it's a prolonged forceful grip, elbow hyperflexion beyond 90 degrees or going from elbow extension into hyperflexion – none of which were activities alleged by the Petitioner. (Id.) He said the activities of door opening, lock opening and bar rapping represent a nominal part of the day. (Id.)

On cross-examination, Dr. Stewart acknowledged that over the past five or so years, he has performed examinations of correctional officers at various facilities and has not found that any of

the officers had a work-related upper-extremity condition. (Id.) He said that medical literature does not support forceful, repetitive activities performed less than a preponderance of the day as causing an increased risk of developing crush neuropathies, assuming a normal ergonomic position. (Id.) He also acknowledged that the development of compression neuropathy is a cumulative process. (Id.)

Dr. Stewart pointed out that when the Petitioner became a lieutenant, his symptoms increased, despite the activities of moving prisoners, opening cell doors, bar rapping, using Folger Adams keys and opening chuck doors were removed. (Id.)

Although Dr. Stewart found that the right carpal tunnel surgery was not necessary, he said the bilateral cubital tunnel and left carpal tunnel surgeries were reasonable and necessary. (Id.)

The Petitioner testified that at the time of arbitration, he was back at work full duty. (T. 19) He said he had no recurring problems with his elbows but noticed loss of strength and longevity when playing golf. (T. 20) He said he coaches high school baseball and has difficulty throwing batting practice. (Id.) He said that as a lieutenant, he does not bar rap but does use Folger Adams keys. (T. 22)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator considers the Petitioner's credibility. His testimony and reports to the physicians were consistent. Therefore, the Arbitrator finds the Petitioner to be credible.

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 accident?

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id.* Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). 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. *Edward Hines Precision Components v. Indus. Comm'n*, 365 Ill.App.3d 186, 192, 825 N.E.2d 773, 292 Ill.Dec. 185 (2nd Dist. 2005) See also *Darling v. Indus. Comm'n*, 176 Ill.App.3d 186, 530 N.E.2d 1135, 1142 (1st Dist. 1988). Proof of effort required or exertion needed may carry great weight only where the work duty complained of is a common movement made by the general public. *Darling*, 176 Ill.App3d. at 1142. The Arbitrator finds that the Petitioner's work activities were not common movements made by the general public. Therefore, proof of effort or exertion is not required.

Dr. Bradley and Dr. Stewart disagreed as to whether the Petitioner's repetitive traumas were due to his work. There are several reasons why the Arbitrator gives Dr. Bradley's opinions more weight.

First, Dr. Stewart did not examine the Petitioner before his surgeries to get first-hand knowledge of what signs there were to indicate carpal and cubital tunnel syndromes or the severity of the Petitioner's symptoms to provide an informed basis for his opinions.

Second, in forming his opinions, Dr. Stewart relied on the Petitioner not having right-handed symptoms after September 2024. This is contrary to Dr. Bradley's statement in his November 5, 2024, treatment note that the Petitioner's symptoms on the right were unchanged. Also, Dr. Stewart relied on there being no electrodiagnostic evidence of cubital tunnel syndrome in forming his opinions, but he testified that the cubital tunnel surgeries were reasonable and necessary.

Third, Dr. Stewart acknowledged that in his evaluations of Department of Corrections employees claiming carpal and/or cubital tunnel injuries, he has never found their conditions to be related to their work. He did not consider repetitive forceful work activities to be a causative factor unless they made up at least 40 percent of a worker's day. However, the case law cited above does not require that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma.

Dr. Bradley thoroughly explained the development of carpal and cubital tunnel syndromes and how what he saw during the surgeries was consistent with those conditions. Rather than focusing on how many minutes per day the Petitioner would participate in hand and elbow intensive activities, he looked at the Petitioner's activities over the prior 9½ years and their

cumulative effect. He also noted that there were no other explanations for the development of the Petitioner's conditions.

Dr. Bradley's opinions also deserve greater weight because he was the Petitioner's treating physician and had more opportunities to become familiar with the Petitioner and his conditions.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral cubital tunnel syndrome and left carpal tunnel syndrome and right Guyon's canal syndrome arose out of and in the course of his employment and were causally related to his work duties.

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

Section 6(c) of the Act provides that notice of an accident shall be given to an employer as soon as practicable, but not later than 45 days after the accident. This section also provides that no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. The legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering, Inc. v. Workers' Comp. Comm'n*, 373 Ill. App. 3d 259, 265, 870 N.E.2d 821, 312 Ill. Dec. 377 (4th Dist. 2007)

The date of the injury (accident) in a repetitive-trauma compensation case is the date when the injury manifests itself – the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 308 Ill. Dec. 715. (2006) Courts have typically set the manifestation date of an injury on either the date on which the employee requires medical treatment, the date on which the employee can no longer perform work activities or the date of formal diagnosis. *Id.* at 72-74.

On September 21, 2024, the Petitioner executed an Employee's Notice of Injury form detailing his injuries and listing a date of injury of August 19, 2024 – the date he saw Dr. Bradley. Therefore, the Arbitrator finds that the Petitioner provided timely notice less than 45 days after the manifestation date.

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

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

Although Dr. Stewart was critical of the number of X-rays taken and lack of conservative care, Dr. Bradley explained that this is standard procedure for injuries involving joints. Further – aside from his causation opinion – Dr. Stewart believed the elbow and left hand surgeries were necessary. As to the right hand, Dr. Stewart was operating under a flawed assumption that the Petitioner was not having right-handed symptoms, as stated above.

Based on this and the findings above regarding causation, the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (L): What is the nature and extent of the Petitioner's injury?

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** There was no AMA impairment rating produced. Therefore, the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works as a lieutenant for the Respondent. He does not face the same physical rigors as when he was a correctional officer, but uses his hands, wrists and elbows and uses Folger Adams keys. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 34 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner's achieved a good result from his surgeries and was returned to work full duty. He testified that his activities of playing golf and coaching high school baseball have been affected. The Arbitrator places som weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the left arm pursuant to Section 8(e)10 of the Act, 12.5 percent of the left hand pursuant

to Section 8(e)9 of the Act, 12.5 percent of the right arm pursuant to Section 8(e)10 of the Act and 12.5 percent of the right hand pursuant to Section 8(e)9 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC015606
Case Name	Taylor Black v. Rebel, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0284
Number of Pages of Decision	10
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Jeffrey Gibellina

DATE FILED: 10/6/2026

/s/ Raychel Wesley, Commissioner

Signature

26IWCC0284

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAYLOR BLACK,

Petitioner,

vs. NO: 25 WC 15606

REBEL, 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 accident, causal connection, incurred 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 23, 2025 is hereby affirmed and adopted.

The bond requirement in §19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 6 2026

/s/ *Raychel A. Wesley*

RAW/mck

O: 9/23/26

/s/ *Carolyn M. Doherty*

43

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC015606
Case Name	Taylor Black v. Rebel, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Dylan Zippay

DATE FILED: 10/23/2025

/s/ William Gallagher, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 21 2025 3.66%

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)

Taylor Black
Employee/Petitioner

Case # 25 WC 15606

v.

Consolidated cases: n/a

Rebel, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on September 26, 2025. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, May 12, 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 not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $ n/a; the average weekly wage was $ n/a.

On the date of accident, Petitioner was 32 years of age, single with 1 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 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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

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

William R. Gallagher, Arbitrator

OCTOBER 23 2025

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on May 12, 2025. According to the Application, "Petitioner jumped down from a shipping dock when he fell to the ground and heard a crunch" and sustained an injury to his "Left knee, left leg, left lower extremity, MAW and all other body parts" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits, as well as prospective medical treatment. Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

In respect to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 17 3/7 weeks, commencing May 27, 2025, through September 26, 2025 (date of trial). The prospective medical treatment sought by Petitioner was treatment for his left knee and left shoulder injuries, but primarily in respect to the left knee. There was also a dispute in respect to the computation of the average weekly wage. Petitioner alleged he was entitled to an average weekly wage of $1,123.20 and Respondent alleged Petitioner was entitled to an average weekly wage of $748.80 (Arbitrator's Exhibit 1).

Petitioner testified he was hired by Respondent to work as a laborer on either May 8 or May 9, 2025, and the person who hired him was Kevin McPherson. Petitioner stated he was hired to work full time, but that he would be working out of town. Petitioner stated his hourly rate of pay was $18.72, he would work 10 hours a day, six days a week, but was off work on Sundays. He stated that all overtime hours were mandatory.

On May 10, 2025, Petitioner rode with Ryan Minds, Petitioner's supervisor, to the job site which was close to Boston, Massachusetts. The date Petitioner sustained the accident, May 12, 2025, was the first day Petitioner performed actual work duties for Respondent.

On May 12, 2025, Petitioner attended a meeting at approximately 6:00/6:30 AM and he received directions as to what his job duties would be for that day. Following the meeting, at approximately 7:00/7:15 AM, Petitioner had to use the restroom.

Petitioner testified that he saw a restroom when he arrived at the job site which was a warehouse. He estimated it was approximately 300 to 350 feet from where he was working. While working, Petitioner saw a porta-potty which was to the left of him and he estimated it was approximately 10 yards from where he was. Petitioner was standing on a dock and he observed an individual who was employed by another company walking toward the porta-potty. The other individual was on the ground at that time. Petitioner engaged in a brief conversation with the other individual and was informed he could go ahead of him and use the restroom ahead of him.

Petitioner then proceeded to jump off of the dock and he landed firmly on his right foot, but did not make a firm landing on his left foot. At that time, Petitioner's left knee made a "…big crunching sound…" and Petitioner fell to the ground.

Petitioner testified he did not believe that jumping off the loading dock was dangerous. He stated that no one from Respondent directed him not jump off the dock, there were no signs posted directing individuals not to jump off the dock, and that he chose to use the porta-potty because it was closer to him and more convenient for him to get to.

Respondent tendered into evidence photographs of the loading dock where the accident occurred. They revealed the loading dock was 4'9" from the ground (Respondent's Exhibit 1). On cross-examination, Petitioner agreed that the loading dock was 4'9" from the ground.

On cross-examination, Petitioner agreed there were two options for bathrooms. The first option was a standard bathroom inside the warehouse which would not have required Petitioner to jump from the loading dock. The second option was the porta-potty which, although it was closer, required Petitioner to jump off the loading dock. Petitioner finally conceded that jumping off the dock was more dangerous than simply walking to the other bathroom and it would have been better if he had used the bathroom inside the warehouse. Petitioner agreed no one forced or directed him to jump off the dock and this was a choice that he made totally on his own.

Ryan Minds testified at trial. Minds stated Respondent was in the business of installing insulation and he and Petitioner traveled with one another to Massachusetts to do a job. He described the jobsite as being a distribution center which was 2/3 football fields long and shaped like a rectangle. He stated he became aware of someone sustaining an injury as a result of jumping off of the dock to go to the bathroom. Minds said he measured the height of the loading dock and determined it was 4'9".

Minds testified there were at least six bathrooms located at the jobsite and most employees used the bathrooms located near the main doors. He stated there were paths to the various bathrooms which were safer than jumping off of the loading dock, specifically, walking to the end of the building where the main doors were located. He said the nearest main door to where Petitioner was working at the time of the accident was approximately 100 to 150 yards and it would have taken Petitioner about 45 seconds to one minute to walk to that bathroom.

Minds testified that safety on the job is a priority and jumping off of a dock is something that you do not do. He stated that if a supervisor had observed someone jumping off a dock in the manner in which Petitioner had done, it is likely that person would have gotten thrown off of the job.

On cross-examination, Minds agreed he was not aware of anyone directing Petitioner not to jump off of the loading dock to use the restroom. He also stated there were not any signs indicating that no one should jump off of the dock.

Minds agreed that there was a reasonable expectation that employees were to go to the bathroom quickly, so that they could return to work. However, on redirect examination, he stated that if someone had to walk an additional 45 seconds to reach a bathroom, this would not have created an issue with Respondent.

Subsequent to the accident, Petitioner was assisted by two other employees and was transported back to the hotel. Petitioner ordered knee braces and later that evening his left knee became swollen

and unstable. Petitioner did not work the following day, May 13, 2025. On May 14, 2025, Petitioner wore a left knee brace and worked a full 10 hour day. On May 15, 2025, Petitioner informed Minds that he did not believe it was safe for him to work on an elevated surface because of the condition of his left knee. Respondent provided a ticket for Petitioner to return to Illinois on a Greyhound bus.

Prior to the accident, Petitioner had not sustained any injuries or received any medical treatment for either his left knee or left shoulder. Petitioner did not receive any medical treatment while he was still in Massachusetts. When Petitioner returned to Illinois, he sought treatment with Dr. Chad Weber, a chiropractor, who initially evaluated Petitioner on May 27, 2025.

When seen by Dr. Weber on May 27, 2025, Petitioner complained primarily of left knee and left shoulder pain. Dr. Weber treated Petitioner's conditions conservatively, but he later ordered an MRI scan of Petitioner's left knee (Petitioner's Exhibit 1).

The MRI was performed on June 18, 2025. According to the radiologist, the MRI revealed a complete ACL tear with corresponding bone contusions in the posterior tibial plateau and anterior lateral femoral condyle (Petitioner's Exhibit 2).

Dr. Weber continued to treat Petitioner and last saw him on July 25, 2025. Dr. Weber has authorized Petitioner to remain off work through August 27, 2025. He has not released Petitioner to return to work without restrictions (Petitioner's Exhibit 1).

Petitioner testified he continues to experience significant left knee pain, and has a very limited range of motion/mobility. He stated Dr. Weber recommended Petitioner needed knee surgery and he wants to be evaluated/treated by a specialist. He also continues to experience left shoulder symptoms and wants treatment for that condition as well. Petitioner testified he has not been able to work at all since the last day he worked for Respondent.

Conclusions of Law

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

The Arbitrator concludes Petitioner did not sustain an accidental injury arising out of and in the course of his employment by Respondent on May 12, 2025.

In support of this conclusion the Arbitrator notes the following:

An injury arises out of one's employment if its origin is in a risk connected with work incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. v. Industrial Commission*, 317 N.E.2d 515 (Ill. 1974). In order to determine whether an employee's injury arose out of the employment, it is necessary to characterize the risk to which the employee was exposed. The risks to which an employee may be exposed are (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks that had no particular employment or personal characteristics. *McAllister v. Illinois Workers' Compensation Commission*, 181 N.E.3d 656, 666 (Ill. 2010).

In the instant case, the critical issue is whether Petitioner voluntarily exposed himself to an unnecessary personal risk for his own convenience. There is not a dispute in respect to the facts of this case. Petitioner jumped off of a loading dock which was 4'9" from the ground to go to a bathroom which was in closer proximity to him than other bathrooms which were available for his use.

In *Dodson v. Industrial Commission*, 720 N.E.2d 275 (5th Dist. 1999), the employee was a waitress employed by Respondent. At the end of her work shift, she exited the workplace and walked down several steps to the sidewalk which led to the employee parking lot. Because it was raining badly, Petitioner walked off of the sidewalk and proceeded to walk across a grassy slope to reach her vehicle more quickly. While walking on the grassy slope, the employee fell backwards and sustained an injury. *Dodson* at 277.

In the *Dodson* case, the Appellate Court denied compensation and determined the employee's injuries did not arise from her employment because she voluntarily exposed herself to an unnecessary danger totally separate from her employment responsibilities. The employee chose to walk across a path that was wet and icy for her own convenience, and not for the interest of the employer. *Dodson* at 279.

In the case of *Hatfill v. Industrial Commission*, 560 N.E.2d 369 (4th Dist. 1999) the employee was in the process of leaving work and was walking to his car which was parked in the upper level of a parking lot. To get across an accumulation of water which was at the base of a 5 foot incline going to the upper level of the parking lot, the employee attempted to jump over the accumulation of water. When he did so, the employee fell and sustained an injury to his right leg and low back. *Hatfill* at 370.

In the *Hatfill* case, the Appellate Court denied compensation on the basis the employee was injured as a result of employee's personal activity which only benefitted himself and not the employer. The Court also noted that "…some people may choose to leave the workplace in an unsafe manner does not make such voluntary acts compensable, nor is Respondent required to police the exit routes to prevent all unsafe voluntary acts." *Hatfill* at 373.

In the case of *Purcell v. Illinois Workers' Compensation Commission*, 184 N.E.3d 373 (4th Dist. 2021), Petitioner worked as a temporary administrative assistant for the University of Illinois and her job duties required her to periodically leave her office to go to other buildings on the campus. Because she was a temporary employee, she was required to turn in her timecard at another building every other Friday. She took a bus to a location close to the other building and proceeded to walk to the building to turn in her timecard. She then crossed a street and came in contact with a chain barrier/fence. The employee then attempted to "hop" over the barrier and, when she did so, the heel of her shoe got caught and she fell on her right elbow. While this was the most direct route to the building, approximately 10 to 15 feet to the left of where employee fell, there was an area where there was not a fence. The employee agreed it would have been safer for her to use a route which did not require her to cross the fence and it would have only required a few extra seconds for her to do so. *Purcell* at 376.

The Appellate Court ruled the employee's accident was not compensable and cited the *Dodson* case. The court noted the employee's decision to hop over a fence was for her own benefit and not the employer's and the use of a safer route would have only required a few extra seconds. The court found the employee voluntarily exposed herself to an unreasonable personal danger. *Purcell* at 379.

The factual similarities between this case and the *Dodson*, *Hatfill*, and *Purcell* cases are obvious. In each of these situations, the employee sustained an injury because he/she chose to engage in a dangerous activity for their own convenience and not for the benefit of the employer. As noted herein, it would have taken Petitioner or a minimal amount of additional time to go to a bathroom located in the warehouse where he was working.

The fact that Respondent did not direct Petitioner not to jump off the loading dock and there were no signs posted forbidding such an action, is not relevant. As was noted in the *Hatfill* case, an employer is not required to act as police to prevent employees from performing unsafe acts.

The "personal comfort" doctrine has no application in this case. While there is no question that an employee may pursue acts of personal comfort, such as going to the bathroom, while at work, the employee still has the burden of establishing that an injury sustained while pursuing an act of personal comfort arose out of the employment. *Karastamatis v. Industrial Commission*, 713 N.E.2d 161, 165 (1st Dist. 1999).

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

The Arbitrator concludes that there is no doubt Petitioner sustained an injury to his left knee; however, based upon the Arbitrator's conclusion of law in disputed issue (C), the accident and resulting injury, of May 12, 2025, was not compensable.

In regard to disputed issues (G), (J), (K), and (L), the Arbitrator makes no conclusion of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (C).

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000945
Case Name	Myra Holmes v. State of Illinois - Illinois Department of Children and Family Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0285
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	George Chepov, Nicholas Clifford
Respondent Attorney	Dan Kallio

DATE FILED: 10/6/2026

/s/Stephen Mathis, Commissioner

Signature

26IWCC0285

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MYRA HOLMES,

Petitioner,

vs. NO: 20 WC 000945

STATE OF ILLINOIS, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, temporary total disability, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms with correction and modification as set forth herein, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects the order of the Arbitrator on page 2, paragraph 1 to reflect the award of temporary total disability benefits in the amount of $691.93 per week for a period of 10-3/7th weeks commencing 10/09/2019 through 12/20/2019, as provided in Section 8(b) of the Act. The Commission makes the same correction to Issue K, page 10, paragraph 3.

The Commission further corrects the order of the Arbitrator on page 2, paragraph 4, to reflect the award of permanent partial disability benefits in the amount of $622.73 per week for a period of 6.45 weeks representing the loss of use of 3% of the left leg, as provided in Section 8(b)2 of the Act. The Commission makes the same correction to Issue L, page 11, last paragraph.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $691.23 per week for a period of 10 3/7th weeks, that being the period of

temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $622.73 per week for a period of 6.45 weeks, as provided in §8(b)2 of the Act, for the reason that the injuries sustained caused the 3% loss of the left leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,045.00 to Christ Advocate Medical Center, $1,256.00 to Advocate Medical Group, $210.49 to Midland Orthopedic Associates, $583.93 to Illinois Orthopedic Network, and $690.00 to NovaCare Rehabilitation for medical expenses under §8(a) and 8.2 of the Act.

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

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

Pursuant to Section 19(f)(1) of the Act, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

OCTOBER 6 2026

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

o: 9/29/26
SJM/msb
44

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000945
Case Name	Myra Holmes v. State of Illinois - Illinois Department of Children and Family Services
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Nicholas Clifford, George Chepov
Respondent Attorney	Dan Kallio

DATE FILED: 12/23/2025

/s/ Joseph Amarilio, Arbitrator
Signature

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

DECEMBER 23 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF DECEMBER 23 2025 3.49%

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

MYRA HOLMES
Employee/Petitioner

v.

Case # **20** WC **000945**

Consolidated cases: **N/A**

STATE OF ILLINOIS/ Illinois Department of Children and Family Services
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was electronically mailed to each party. The matter was heard by the Honorable Joseph Amarilio**,** Arbitrator of the Commission, in the city of Chicago, on September 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

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
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?

FINDINGS

On **10/8/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**53, 970.28**; the average weekly wage was $**1.037.89**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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 payments made under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,045.00 to Advocate Christ Medical Center, $1,256.00 to Advocate Medical Group, $210.49 to Midland Orthopedic Associates, $583.93 to Illinois Orthopedic Network, and $690.00 to NovaCare Rehabilitation, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make those payments directly to the medical providers.

Pursuant to the agreement of the parties, Respondent shall be given a credit for medical benefits that have been paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act, 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, and Respondent shall hold Petitioner harmless for any conditional payments made by Medicare XX Blue Advantage HMO.

Respondent shall pay Petitioner temporary partial disability benefits of $691.93 per week for 10-3/7th weeks, commencing 10/09/2019 through 12/20/2019, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $691.93 per week for 6.45 weeks, because the injuries sustained caused the 3% loss of the left leg, as provided in Section 8(e) of the Act.

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

DECEMBER 23 2025

ATTACHMENT TO THE ARIBTATION DECISION
MYRA HOLMES v. STATE OF ILLINOIS 20 WC 000945

I. INTRODUCTION:

This action was brought under the Illinois Workers' Compensation Act (the "Act") by the Petitioner-Employee, Ms. Myra Holmes ("Petitioner"). Petitioner is seeking benefits from the Respondent-Employer, the State of Illinois ("Respondent"). Respondent denied liability.

On September 25, 2025, a hearing was held on the following issues in dispute: 1. Whether Petitioner sustained an accident that arose out of and in the course of her employment. 2. Whether Petitioner's current condition of ill-being is causally related to her work accident. 3. Whether Respondent is liable for payment of unpaid medical bills. 4. Whether Petitioner is entitled to temporary total disability benefits, and if so, for what time period. 5. What is the nature and extent of Petitioner's disability. (Arb. Ex. 1). Petitioner's Exhibits #1-5 were admitted. Respondent's Exhibits #1-3 were admitted. The parties requested a written decision.

II. FINDINGS OF FACT

Testimony of Petitioner:

Petitioner holds a bachelor's degree in social work from Philander Smith College in Arkansas, obtained in 1980, and completed approximately a year and a half toward a master's degree at the University of Chicago starting in 1994 (T. p. 13).

On October 8, 2019, Petitioner was employed at the Department of Children and Family Services in the child protection division as a child protection investigator (T. p. 13). Her duties involved investigating abuse and neglect cases that were assigned to her (T. pp. 13-14). These investigations required her to respond within specific time frames depending on the urgency: emergency cases required her to be *en route* within 15 minutes, if action was needed within 2 hours, while normal mandates allowed 24 hours (T. p. 14). Her work territory covered Cook South, spanning from the North Side of Chicago to around 63rd or 67th Street on the South Side (T. p. 14).

On the morning of October 8, 2019, Petitioner received an emergency intake assignment that required her to be *en route* within 15 minutes (T. pp. 14-15). She gathered the intake paperwork, which contained details about the investigation, allegations, and the address she needed to visit (p. 15). Petitioner started her workday at 8:30 a.m.. Her accidental fall occurred, before lunch (T. p. 24).

Petitioner was on the 8th floor (T. p. 17) of the building located at 1921 South Indiana in Chicago (T. p. 18). The building was occupied entirely by the State and housed DCFS operations across floors one through ten of the 10 floor building (T. pp. 23). On that day, one elevator was out of service and the other was taking a long time to arrive (T pp. 16-17). After waiting approximately five to seven minutes for the working elevator, Petitioner decided to take the stairs as did some other people who got assignments.. She took the stairs instead of the elevator in order to meet the 15-minute mandate (T. pp. 16-17).Petitioner's coworker, Ms. Tiara Long, accompanied her down the stairs, as she also had an assignment requiring action within two hours (pp. 17-18, 44).

Petitioner's supervisor, Cynthia Celestine (T. pp. 40-41) had given her the emergency intake assignment in a hostile manner (T. p. 43). She did not enjoy a good relationship with Ms. Celestine (T.

42). Petitioner explained she was under "distress" (T. p. 43). She would "inherent a lot of vicarious trauma in that position as a child protection investigator. The last thing you need is a supervisor being unfair and hostile right before you are getting ready to go out and do a job, an investigation"(T, p. 43). Her supervisor told her in a "rough and hard" manner that she needed to leave in 15 minutes (pp. 41-42, 46-47). Petitioner had not had time to fully read the assignment details before rushing out (p. 42). Her supervisor would yell. "She created a toxic environment….(T. 45). Petitioner recalled that her supervisor yelled at her because she questioned if her turn for an assignment. "They had a tendency to just assign things, more investigations to some people and some of the other workers they would show favoritism. It wasn't a fair assignment sometimes " (T. p. 46).

As Petitioner descended the stairs with her paperwork in hand, she was looking at the address while navigating the steps (T. pp. 16-17). She fell face down after missing a step (T. pp. 17-18). She braced herself with her knees, landing on her knees, to avoid hitting her head on the concrete, and her papers went flying (T. pp. 18, 19). Petitioner does not remember how many flights of stairs she had descended before the fall. "It has been six years, and my memory is exhausted" (T. p. 19).

Immediately following the fall, Petitioner experienced what she described as the worst pain she had ever felt, rating it as a ten out of ten (T. pp. 20-21). The pain was predominantly on her left side, shooting from her foot upward through her knee and along the entire left side of her body, with additional pain in her right foot (T. p. 20). Her coworker Tiara Long helped her back up the stairs to her workstation. Because she could not continue with the investigation, it was reassigned to someone else (T. p. 19).

The building lacked wheelchairs, so staff improvised and rolled Petitioner out in an office chair to the garage and down to street level (T. pp. 23-24). Her son came to pick her up and drove her to Advocate Christ Medical Center in Oak Lawn, a trip that took approximately 30 to 40 minutes due to favorable traffic conditions (T. p. 23). Petitioner left the hospital with a walker, which she used for about a month before transitioning to a cane (pp. 28-29).

The emergency room staff placed her on a roller bed, conducted triage, took vital signs and personal information, and administered a pain killer that did not provide relief (T. pp. 25-26). By the time she arrived at the hospital, her pain had intensified to what she described as "about an 11 pain or over" (T. p. 25). According to Petitioner, X-rays revealed that the cartilage in her left knee showed more inflammation than her right knee, with medical staff inquiring whether she had hit the left side first, though she could not recall (T. p. 26).

Petitioner followed up with her primary care physician, Dr. Hampton of the Advocate Medical Group. He referred her to High Tech Medical for additional X-rays and an MRI, though she could not recall the specific findings discussed with her at that time. Her "memory is exhausted" (T. p.. 28). as to what she was told at that time. (T. pp. 27-28). She was also referred to an orthopedic surgeon and received cortisone injections to her knee, which helped relieve the throbbing and burning pain in her leg (T. pp. 29-30).

Petitioner participated in physical therapy twice a week, performing exercises that included lying on her side, raising her legs, bringing her knees in, and working various muscle groups, though she could not recall the exact duration of her therapy (T. pp. 30-31). She was out of work for three months, from October 8, 2019, until around January 2, 2020 (T pp. 30).
When she returned to work, Petitioner was still sore and required use of a cane T.(p. 32). She could no longer perform field investigations and applied for a different position at the State Center Registry

(SCR), working on the hotline where she takes in reports of abuse and neglect and assigns investigations to field workers (T. p. 32). This role involves the same type of work she previously performed in the field, but now she creates the intake paperwork rather than responding to it (pp. 47-48).

Currently, Petitioner continues to experience pain a "little pain here and there sometimes" (T. p.32) .in her left knee and outer left thigh, with occasional pain extending to her hip (pp. 33-37). She rated her pain as typically an eight out of ten, occurring approximately eight to ten times per month, though she experiences episodes of ten out of ten pain with throbbing and burning sensations (pp. 33-34). Her right foot also continues to hurt, sometimes reaching a ten out of ten-pain level that requires her to lie down and elevate it (pp. 35-36).

Petitioner testified that her doctor explained that the pain indicates inflammation in the area (p. 36). She had been taking 800mg of Ibuprofen for pain management, but her doctor discontinued this medication when it began affecting her kidneys and other internal organs, switching her to Tylenol 3 instead (T pp. 33-34, 37). She also uses prescription Lidocaine patches to help reduce inflammation, which sometimes provide relief. While Tylenol 3 helps with the pain, she found that Ibuprofen worked better (T. pp. 36-37).

Petitioner has been on Family Medical Leave Act (FMLA) intermittently since October 19, 2019, shortly after her return to work. (T. p. 34). She currently works remotely from home every day, taking calls and writing up intake paperwork (T. pp. 34-35). She has received pay increases since the incident and now earns more than she did at the time of her injury (T. p. 47).

Regarding her work environment, Petitioner described her former supervisor, Ms. Cynthia Celestine, as creating a toxic and hostile environment within their unit (T. pp. 45-46). Ms. Celestine would yell at staff and showed favoritism in assignment distribution, with some workers receiving more investigations than others unfairly (T. pp. 46-47). On the day of the fall, her supervisor had yelled at Petitioner before she left for her assignment, though Petitioner could not recall the specific reason, believing it related to questioning whether it was her turn for an assignment (T. pp. 46-47). Petitioner testified that dealing with a hostile supervisor immediately before responding to an emergency investigation added unnecessary stress to an already demanding job that involves significant vicarious trauma from investigating child abuse and neglect cases (T. pp. 42-43). Her current position, while still involving vicarious trauma from hearing about abuse and neglect throughout the day, exists in a less hostile atmosphere (T. pp. 47-48).

Witness and Incident Reports:

Respondent introduced into evidence two witness reports and the supervisor incident report of Ms. Cynthia Celestine without objection. Respondent's Exhibit 1 is a witness report prepared by Child Protection Specialist Ms. Tiara Long on October 11, 2019.. In pertinent part, Tiara long documented that they were "walking down the front stairwell at the work location from the 8th floor, [Petitioner] was to my right and holding on to the rail. Myra and I was talking, due to her being upset regarding work related issues." (RX1). Ms. Long goes on to document that it appeared that Myra missed the last step and that Myra was carrying her work cell phone and personal cell phone in her hand at the time and her work phone flew out of her hand. The fall occurred at 11:37 a.m. No mention was made of an emergency assignment. There is no mention that she was not on an assignment.

Respondent's Exhibit 2 is the notice of injury form completed by Petitioner on October 10, 2019.. Petitioner confirmed that she filled out this document by hand. Petitioner documented that "I was walking down the stairs and fell." Petitioner further states that the incident occurred because of a third party, her supervisor, Ms. Cynthia Celestine. (RX2). Petitioner wrote that the incident was the fault of her supervisor for "creating a havoc and hostile work environment, she yelled and talked down to me in a condescending manner." There is no mention of an emergency assignment. There is no mention that she was not on an assignment.

Respondent's Exhibit 3 is the supervisor's report of injury form prepared by Petitioner's supervisor, Ms. Cynthia Celestine, on October 15, 2019. Ms. Celestine recorded that she was informed by Ms. Tiara Long that "Myra came by her desk and asked her to walk with her." (RX3). There is no mention of an emergency assignment, yelling or argument. There is also no mention that she was not on an assignment.

Medical Evidence:

Petitioner was initially examined at Advocate Christ Medical Center Emergency Room in Oak Lawn. (PX1). Petitioner presented with complaints of pain both knees, and right ankle following a fall. Petitioner reported that she hit her left knee and then right, with her left knee hurting more than the right. The pain was classified as moderate. She complained of increased pain on weight bearing and walking. (PX 1, p. 43). Physical examination findings revealed bilateral anterior knee tenderness; range of motion restricted due to pain but no laxity. No swelling, no erythema, no ecchymosis. She was discharged with a diagnosis of bilateral knee pain. (PX 1, p. 44).

X-rays revealed no fractures or dislocations of the left knee or right ankle. Petitioner was discharged the same day and advised to use a walker. Petitioner was given an off work note indicating that she could return to work on October 14, 2019. (PX1).

\Petitioner continued to treat at Advocate through their outpatient clinic in Beverly for both related and unrelated reasons. (PX2). Petitioner underwent (1) an X-ray of the left knee showing no fractures or dislocations, (2) an X-ray of the right ankle showing no acute fractures or dislocations, No acute abnormality. (3) a left knee MRI without contrast which was interpreted by the radiologist as a low-grade sprain of the medical collateral ligament.(PX1; PX2).

On October 15, 2019, Petitioner presented to Dr. Hampton at Advocate for a follow up evaluation from her emergency room visit the week prior as well as a checkup for diabetes and arthritis. (PX2). It was noted that Petitioner reported a fall at work on October 8, 2019, and that there was no swelling in her knees. Work status does not appear to have been addressed.

Petitioner returned to Dr. Hampton on November 15, 2019, for a follow-up visit. (PX2). Petitioner had complaints of mild left shoulder and neck pain and muscle spasms in her back reporting direct injury to her left wrist when she fell down at work. Petitioner was diagnosed with a sprain of the collateral ligament of left knee and a contusion in the left knee with some inflammation in the patella. She was ordered off work from October 9, 2019, to December 2, 2019. (PX2).

On November 25, 2019, Petitioner presented to NovaCare Rehabilitation on the recommendation of Dr. Hampton for physical therapy for a sprain of the medical collateral ligament of the left knee. She was prescribed for physical therapy sessions of once a week for 5 weeks. Petitioner attended two sessions, November 25, 2029 and December 20, 2019 and did not show up for the three other

sessions. (PX3). On physical examination at the first session of November 25, 2019, Petitioner had restricted range of motion of the left knee, right knee was within normal limits. Petitioner complaint of pain in the left knee from 0 to 11/10., worse in the morning and with standing, walking and stairs.. At the second attended session on December 20,2019, Petitioner tolerated treatment with minimal left knee pain. Petitioner attended two sessions of the prescribed 5 sessions. She cancelled the 12/11/19 sessions and failed to show for the 12/18/ 19and 12/23/29 sessions. (PX3, p. 12)

Petitioner returned to Dr. Hampton on December 12, 2019, for a follow-up appointment for pain in her shoulder and left knee. (PX2). It was noted that there was pain in the extension of the left knee, but no crackling or inflammation was noted. She was given an off-work slip.

Petitioner presented to Midland Orthopedic on February 17, 2020, for an evaluation of her left knee. Petitioner was diagnosed with degenerative joint disease of the left knee and a bone contusion of lateral femoral condyle. (PX4).

Petitioner presented to Dr Edward S. Forman, a board-certified orthopedic surgeon at Illinois Orthopedic Network for a consultation on January 20, 2020, with complaints of bilateral knee pain, left greater than right. She gave a consistent history of accident, landing mostly on her left knee. Physical examination revealed that she was a 60-year-old well-nourished female, at a standing height of 4 feet, 11 inches, weighing 182 pounds. She ambulated on her own power without assistive devises (PX5)

Standing X-rays of the left knee taken and reviewed at the time of the visit demonstrated near complete loss of the medical joint space with bone-on-bone arthrosis. A 10/25/19 MRI report was available, not the MRI films. The report demonstrated focal subchondral bone marrow edema at the posterior margin of the lateral femoral condyle. The findings could represent contusion or could be reactive secondary to overlying chondrosis at the deep flexural articular cartilage. No discreet chondral defect was visualized. Moderate to severe patellofemoral chondrosis. Mild chondrosis in the tibiofemoral joints. Low grade sprain of the MCI. She was instructed to continue with Ibuprofen and physical therapy (PX5)

She was given an injection to the left knee. “Very conservative management” was recommended. (PX5).. On January 20, 2020, she received an injection in her left knee. Dr. Forman also noted that she may be a candidate for knee replacement surgery but hopefully conservative medical management care will suffice (PX5).

Petitioner then returned to Dr. Forman on May 4, 2020, which was performed as a telehealth visit for chief complaint of left knee pain. Petitioner reported some improvement following her injection three months prior in her left knee. She reported some pain and swelling in her knee at times. She “did not get into therapy without taking anti-inflammations subsequent to” the January 20, 2020 visit. as advised (PX 5 at 8). Petitioner was advised to begin physical therapy for 4 weeks, take anti-inflammatories and return as needed She was diagnosed with bilateral degenerative joint disease, left knee greater than right.(PX 5).

A review of the medical records indicates only that she fell at work, with no mention of her falling *en route* to an assignment nor that she upset due a toxic work environment. . No additional medical records were submitted as evidence.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Act provides that, to obtain compensation under the Act, Petitioner 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 his or her claim. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980)

And yet, it also is well established that the Act is humane law of remedial nature and is to be liberally construed to affect the purpose of the Act that the burdens of caring for the casualties of industry should be borne by the industry and not by the individuals whose misfortunes arise out of the industry, nor by public. *Shell Oil v. Industrial Commission,* 2 Ill. 2d 590, 603 (1954). The Act should be liberally construed to provide financial protection for injured workers. *McAllister v. Illinois Workers' Compensation Commission.* 2020 IL 124848. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission*, 52 Ill. 2d 158,165 (1972). Workers are entitled to "prompt, sure and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such industries: rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill. 2d 167, 174 (1956). Decisions of an arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of the claimant's employment. An injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee. *International Harvester Co. v. Industrial Comm*., 56 Ill. 2d 84, 89 (Ill. 1973). An injury occurs "in the course of' employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. For an injury to 'arise out' of the employment 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. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848.

Petitioner testified that she was walking down the stairs from the 8th floor when she missed a step and fell forward. She was on her way to investigate an assignment and used the stairs because one elevator was broken and the other was malfunctioning in the building exclusively occupied by Respondent..

Petitioner's testimony is not directly refuted by Respondent, who did not call her supervisor or co-worker to testify. The witness and supervisor reports neither corroborate nor contradict Petitioner's

version of events. Given Petitioner's age, substantial weight, and generally deconditioned state resulting from various unrelated health conditions, including asthma, the Arbitrator finds it unlikely that she would descend eight flights of stairs absent an urgent situation. Petitioner provided such precise and credible details regarding the circumstances that prompted her emergency departure that the Arbitrator finds her testimony both believable and truthful.

The evidence supports that Petitioner suffered an injury after falling at her place of employment while performing work assigned by her supervisor. Respondent was the sole tenant of the property housing its agency, and the lack of working elevators, combined with Petitioner's need to hurry, led to this injury. Petitioner was distracted when she fell, looking at her assignment and talking to her co-worker while walking down the stairs. The evidence supports that she may have been distracted by an unpleasant and upsetting encounter with her supervisor regarding her work assignments shortly before her fall.

After reviewing the entire record, the Arbitrator finds that Petitioner did have an accident that arose out of and in the course of her employment on October 8, 2019. The Arbitrator notes that Petitioner's fall was not due to a personal risk factor. The medical records contain no indication that Petitioner experienced any falling incidents attributable to internal weakness prior to the accident. The Arbitrator concludes that Petitioner's fall resulted from a misstep caused by distraction that contributed to her accident; an accident that arose out of her employment in accordance with the parameters of the Supreme Court's decision in *McAllister.*

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

It is well settled that employers take their employees as they find them. Therefore, even though an employee may have a pre-existing condition which may make her more susceptible to an injury, compensation for the injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co., v. Industrial Comm'n*, 92 Ill. 2d 30, (1982). Furthermore, an accidental injury need not be the sole causative factor, or even the primary causative factor as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co., v. Industrial Comm'n*, 37 Ill. 2d 123, 127 (1967 If a pre-existing condition was asymptomatic prior to the injury and then became symptomatic as a result of the injury, aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits (*Id* at 67-68).

The Arbitrator finds that Petitioner sustained accidental injuries to her bilateral knees, left worse than right, and right ankle.. The Arbitrator finds Petitioner's current condition of ill-being to her left knee is causally related to her work injury of October 8, 2019, and finds that her right knee and right ankle injury resolved with conservative medical care. Accordingly, based on the credible testimony of Petitioner, the chain of events, as well as the medical records, Petitioner has affirmatively demonstrated by a preponderance of the evidence a causal relationship between her work-related injuries. Immediately prior to her injury, Petitioner did not have any documented issues with any of the injured body parts and was working her normal job duties with Respondent without physical restrictions or need for medical care. Further, there no evidence of a subsequent injury that would constitute as an intervening event.

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 conservative treatment received is reasonable, necessary and causally related. Respondent shall pay for reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,045.00 to Advocate Christ Medical Center (PX1); the total of $1,256..00 to Advocate Medical Group for treatment received as follows: $213.00 for treatment received on 10/8/19, $203.00, $90.00 and $91.00 for treatment received on 10/14/19; $203.00 for treatment received on 12/12/19 ; $213.00 for treatment received on 10/8/20; $90.00 for treatment received on 12/21/20 and $153.00 for treatment received on 2/12/21 (PX2); $210.49 to Midland Orthopedic Associates (PX4), $583.93 to Illinois Orthopedic Network (PX5); and $690.00 to NovaCare Rehabilitation (PX 3)., as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make those payments directly to the medical providers in accordance with the Act.

Pursuant to the agreement of the parties, Respondent shall be given a credit for medical benefits that have been paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act, 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 hold Petitioner harmless for any conditional payments made by Medicare XX Blue Advantage HMO and shall be entitled to credit in accordance with Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant is temporarily totally disabled (TTD) from the time an injury incapacitates him from work until the time 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, he is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Petitioner claims to be entitled to temporary to TTD benefits commencing on October 9, 2019 through January 2, 2020. Respondent denied liability.(Arb. Ex. 1). However, the medical evidence supports Petitioner's entitlement to TTD for the period of October 9, 2019 through December 20, 2019.

Therefore, the Arbitrator finds that Petitioner is entitled to temporary partial disability benefits of $691.93 per week for 10-3/7th weeks, commencing 10/09/2019 through 12/20/2019, as provided in Section 8(a) of the Act, in the amount of $7,215.84.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In determining permanent partial disability benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App

(1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Level of Impairment under the AMA Guides: With regard to Section. 8.1b.(a), the Arbitrator finds that neither Petitioner nor Respondent submitted a report setting forth an AMA impairment rating. The Arbitrator finds that an impairment rating is not necessary based on the appellate courts holding in *Corn Belt Energy v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC (3d Dist. 2016). The court held that an AMA Impairment Rating is not required for the Arbitrator to award permanent partial disability benefits. Accordingly, the Arbitrator need not and does not consider this factor as it relates to the nature and extent of the injury. The Arbitrator therefore finds that this factor weighs neither in favor of increased nor decreased permanence.

Occupation of Petitioner: With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator has considered this factor and notes that the record reveals that Petitioner was employed as child abuse investigator and was released full duty to the position Because of these facts, the Arbitrator therefore gives some weight to this factor in finding decreased permanence

Age of Petitioner: With regard to subsection (iii) of §8.1b(b), the Arbitrator has considered this factor and notes that Petitioner was 60 years old at the time of the accident and that no evidence was presented as to how Petitioner's age affected her disability. The Arbitrator notes that Petitioner has shorter work expectancy due to age. The Arbitrator give this factor weight in finding decreased permanence.

Future Earning Capacity: With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator has considered this factor and notes Petitioner has returned to her usual occupation and is earning more money now than before. . The Arbitrator therefore gives more weight to this factor in favor of decreased permanence. .

Evidence of Disability Corroborated by the Treating Medical Records: With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator has considered this factor and notes that there is sparce objective findings corroborating Petitioner's subjective complaints. The. x-rays were negative for fractures or dislocation. The emergency records reflect that on physical examination, Petitioner did not have any swelling, erythema, or ecchymosis. Petitioner's testimony as to the number of the number of physical session prescribed and attended is not corroborated by the medical evidence. She did recall needing only one injection which id help. The medical evidence reflects that Petitioner was prescribed conservative medical care consistent soft tissue injuries. Her injuries did not require surgery.

Petitioner was diagnosed a low-grade sprain of the medial collateral ligament of the left knee and right ankle sprain for which she received limited conservative medical treatment. Moreover, Petitioner elected not tp take full advantage of the conservatively prescribed five physical therapy sessions. At her last attended physical therapy session, the therapist recorded that Petitioner tolerated treatment with minimal left knee pain. The Arbitrator is giving some permanence to the left knee injury because the record reflects her low-grade sprain of the medial collateral ligament was superimposed on her preexisting near complete loss of the medial joint space with bone-on-bone arthrosis. The Arbitrator therefore gives more weight to this factor in finding some permanence. Based on the above factors, the record taken as a whole and Commission precedent, the Arbitrator awards Petitioner permanent partial disability benefits of $691.93 per week for 6.45 weeks because the injuries she sustained caused a 3% loss of her left leg, as provided in Section 8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025752
Case Name	Terry Schmitt v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0286
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 10/6/2026

/s/Kathryn Doerries, Commissioner

Signature

26IWCC0286

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terry Schmitt,

Petitioner,

vs. NO. 21WC025752

American Coal Company,

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 causal connection, occupational disease, permanent partial disability, legal error, evidentiary error, Section 1(d) – Section l(f), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2025, is hereby affirmed and adopted.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 6 2026

KAD/sj
O-9.15.26
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025752
Case Name	Terry Schmitt v. The American Coal Company
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Kenneth Werts

DATE FILED: 3/6/2025

/s/William Gallagher, Arbitrator

Signature

INTEREST RATE WEEK OF MARCH 4 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

Terry Schmitt
Employee/Petitioner

v.

The American Coal Company
Employer/Respondent

Case # 21 WC 25752

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on February 13, 2025. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other Sections 1(d)-(f) and 6 of the Occupational Diseases Act

FINDINGS

On March 20, 2020, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $115,051.56; the average weekly wage was $2,212.53.

On the date of accident, Petitioner was 59 years of age, married with 0 dependent child(ren).

Petitioner claims no medical.

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

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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

William R. Gallagher

MARCH 6 2025

William R. Gallagher, Arbitrator
ICArbDefpc p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an occupational disease to his lungs, heart, pulmonary system and respiratory tracts. The Application alleged a date of last exposure of March 20, 2020, and that Petitioner sustained the occupational disease as a result of inhalation of coal mine dust including, but not limited to, coal dust, rock dust, fumes & vapors for a period in excess of 34 years. Petitioner was 59 years old at the time of last exposure.

Petitioner was an underground coal miner most of his life. He started as a shuttle car operator at the face of the mine and then advanced to a miner operator. He later advanced to a tailgate shear operator for Sahara Coal Company. In 1999, he was hired by Respondent as a longwall shield operator and later advanced to tailgate shear operator, longwall production foreman, longwall coordinator, and assistant superintendent. Petitioner's last day of employment was March 20, 2020.

Petitioner testified that he has had coughing all the time that had started about 20 years ago caused by a mine fire. At that time, he went to the doctor and pursued a separate workers' compensation claim related to that incident, which he settled through the compensation system. A copy of the settlement contract for Petitioner's injury of August 24, 2003, to his lungs in which he received 10% MAW pursuant to Section 8(d)2 of the Act was entered into evidence (Respondent's Exhibit 6, pp 1-3).

Petitioner testified that since stopping work in 2020 he continues to have shortness of breath upon exertion and still coughs.

Petitioner testified that these symptoms affect his daily life. He has been trying to exercise more, but after 30 minutes, he has to sit down and rest. He owns a cabin and can no longer do a full day of work at the cabin. He testified he goes deer hunting at the cabin. He has to stop when he walks the hills to hunt.

Petitioner was laid off when the mine closed. He stayed on after closure to help get the equipment out. Before the closure, Petitioner testified he was sent to a Kentucky mine owned by Mr. Murray, where he worked underground trying to get it going. That mine was closed as well. Since leaving mining, Petitioner has not worked again.

Petitioner testified that he graduated high school and has an associate degree from Southeastern Illinois College in occupational therapy. He testified that he worked for Sahara Coal for fourteen years and then went on to a government program where he was sent for retraining. He obtained an Associate of Applied Science degree and was a member of Phi Beta Kappa based on his grade point average. He was also on the Dean's List. Petitioner worked as an occupational therapy assistant for three years, including at Mt. Vernon Nursing & Rehab and West Park Rehab. He testified that he worked as a farmer at McGuire Farms from 1976 until 1985 during which time he also got married.

Petitioner testified that he is treating with cardiology at Deaconess Hospital in Evansville. He underwent a heart catheterization in September, 2024, which revealed three arteries at 50 percent blockage. He has not had angioplasty and is currently being monitored. He takes a baby aspirin, a beta-blocker, and medication for high blood pressure.

Petitioner testified that he had to go back on an inhaler, Combivent in September of 2024. He testified that he has not seen his primary provider, Dr. Brent Jones in a year. He testified he sees a cardiologist, Dr. Chili in Evansville. Petitioner testified he was sent to a pulmonologist by the cardiologist. He testified that he was prescribed the inhaler by a pulmonologist whose name he could not recall. He further testified that the pulmonologist performed a breathing test and performed chest imaging. He also testified the testing was performed by his pulmonologist in 2024.

Petitioner testified that he saw Dr. Istanbouly for this claim in March of 2022. Petitioner testified that while working in the mine, he had the opportunity to undergo NIOSH chest x-ray screening for black lung and "took them every chance he could." He did not bring those records to trial. He testified that he has seen multiple doctors for pulmonary function tests, including Dr. Istanbouly in March, 2022, and a pulmonologist in Evansville in June, 2022, at the request of Respondent.

Petitioner testified that he exercises by walking. He testified he walks up to two miles nearly every day, depending on the weather. He testified he owns a home on one acre of land and has been spending time working on his house, including painting and doing yard work that he never had time to do when he was working.

Petitioner testified that he owns a cabin on 40 acres of wooded and hilly land in Hardin County. He testified that he hunts deer at the cabin. He successfully harvested one deer in the past year, which he described as a six-pointer. He also testified that there are a lot of limbs down on the property, which require maintenance and he picks up sticks on the property and mows about five acres on the property.

Petitioner testified that he has five grandchildren and babysits three of them frequently. He testified that at one point, he was watching them about every day, though it has slowed down. He and his wife recently traveled to Florida to visit their other two grandchildren, but he has not really been on vacation in years. Petitioner testified that he uses his inhaler three times per day because that is what the doctor recommended. He testified he does not like taking medicine.

Dr. Suhail Istanbouly is a practicing physician specializing in pulmonary medicine, critical care, and sleep medicine. He testified his main location is Hines VA in the Chicago area, and he maintains satellite clinics in southern Illinois (Petitioner's Exhibit 1, p 4). He testified that he started working in southern Illinois from 2003 until 2019. He testified that he worked at the black lung clinic all the time. He testified that when he left southern Illinois and went to the Hines VA, he maintained a satellite clinic in southern Illinois which he visits once a month for two days. Dr. Istanbouly testified that while in southern Illinois, between inpatient and outpatient care, he treated coal miners daily, with coal miners comprising approximately 10 to 20 percent of his practice. He testified that he personally conducted pulmonary function tests and interpreted chest x-rays in the care and treatment of his patients. Dr. Istanbouly is not a B-reader but testified that he did not

require a B-reader's report to diagnose black lung. He stated that he had observed B-reader reports being used primarily in legal disputes (Petitioner's Exhibit 1, pp 5-6).

Dr. Istanbouly examined Petitioner on March 22, 2022, at the request of Petitioner's attorney. As part of his examination, he took a patient history and performed a physical examination. Dr. Istanbouly testified that he authored a report which stated that Petitioner worked 34 years as an underground coal miner and that his last position was as an assistant superintendent. He worked six shifts per week, averaging 12 hours per shift. In his final year of employment, his duties were divided between 25 percent office work and 75 percent work in the mine. Petitioner was laid off and did not leave the mine due to health issues (Petitioner's Exhibit 1, pp 7-9).

Dr. Istanbouly's report also stated that Petitioner reported daily coughing for the past ten years, which was moderate in intensity and most prominent in the morning. Petitioner described the cough as productive of mild, clear yellowish sputum and stated that since leaving the mine, it had subsided somewhat. Dr. Istanbouly's report stated that Petitioner reported a few episodes of hemoptysis in the past but none recently. The report indicated that Petitioner was unable to identify a triggering factor for his cough. The report indicated Petitioner related mild exertional dyspnea and that he currently gets short of breath by walking a half a mile to one mile. The report indicated that Petitioner related mild and gradual worsening of respiratory capacity over the past few years (Petitioner's Exhibit 1, p 9).

Dr. Istanbouly's report indicated that Petitioner's spirometry was within normal range per ATS guidelines, with an FEV1 of 4.46 L (134% predicted), an FVC of 6.29 L (142% predicted), and an FEV1/FVC ratio of 71% (Petitioner's Exhibit 1, p 10). Dr. Istanbouly's report indicates his physical examination of Petitioner's lungs found good air entry bilaterally with no wheezing or rales. His report indicates his assessment is simple coal workers' pneumoconiosis. Dr. Istanbouly's report concluded that long-term coal dust inhalation was a significant contributor to Petitioner's chronic respiratory symptoms, including chronic daily cough, occasional sputum production, and progressive exertional dyspnea. Dr. Istanbouly's report stated that it was medically advisable for Petitioner to avoid further coal dust exposure to prevent progression of his pulmonary disease (Petitioner's Exhibit 1, pp 12-13).

Dr. Istanbouly testified that within a reasonable degree of medical certainty Petitioner has simple coal workers' pneumoconiosis. He testified that within a reasonable degree of medical certainty, Petitioner met the criteria for chronic bronchitis, though he categorized it under simple coal workers' pneumoconiosis. He testified that Petitioner's pulmonary symptoms included chronic daily cough, occasional sputum production, and progressive exertional dyspnea (Petitioner's Exhibit 1, pp 12-13).

Dr. Istanbouly testified that within a reasonable degree of medical certainty, Petitioner had suffered lung damage due to coal workers' pneumoconiosis. He testified that it is advisable for Petitioner to avoid any further coal dust exposure due to the risk of disease progression (Petitioner's Exhibit 1, pp 14-15). Dr. Istanbouly testified that although Petitioner's PFT's were within normal limits per ATS guidelines, under *AMA 6th Edition* he could argue about the FEV1/FVC being not normal as he interprets Table 5-4 as requiring an FEV1/FVC of 75% or greater to fall in Class 0. He testified that chronic bronchitis symptoms, including cough, could improve after removal from

exposure to an irritating factor. He testified that the fact of Petitioner's cough subsiding some after leaving the coal mine indicates that the coal mine environment was a trigger for his cough (Petitioner's Exhibit 1, p 16).

Dr. Istanbouly testified that if he assumed Petitioner was involved in an underground coal mine chemical fire in 2003 and his treaters diagnosed him with reactive airway disease based on methacholine challenge and also diagnosed asthma. Another seventeen years of coal mine exposure would aggravate the diseases on a permanent basis. He testified that it is possible to have coal workers' pneumoconiosis and chronic bronchitis with PFTs in the normal range (Petitioner's Exhibit 1, pp 17-18).

Dr. Istanbouly testified that not all miners with 30 years of exposure get coal workers' pneumoconiosis, but a significant percentage of them will get some degree of it. Dr. Istanbouly testified that a negative chest x-ray does not rule out coal workers' pneumoconiosis and that miners can still have the disease despite negative radiographic findings. He testified that it would be highly unusual for a miner with 30-40 years of exposure to have no opacities on a chest x-ray (Petitioner's Exhibit 1, pp 18-19). Dr. Istanbouly testified that, given Petitioner's work schedule of 12 hour shifts, six days per week for 24 years, it was reasonable to estimate that his total exposure exceeded that of an individual with 34 years of exposure working standard 40 hour weeks, and would indicate more than 34 years of actual exposure (Petitioner's Exhibit 1, p 16).

Dr. Istanbouly testified that he performs five to seven examinations per month, always at the request of a claimant attorney. He testified that Petitioner related no past history of respiratory diseases. He testified that Petitioner was unable to identify any trigger for his cough and he was not taking any breathing medication and had not taken any in the past (Petitioner's Exhibit 1, pp 20-21). Dr. Istanbouly testified that Petitioner did not relate that he left the mine due to health reasons. Dr. Istanbouly testified that there are causes for exertional dyspnea other than respiratory disease such as heart disease and deconditioning (Petitioner's Exhibit 1, pp 21-22). He testified that Petitioner was obese at the time he examined him. Dr. Istanbouly testified that he is not sure what Petitioner had done since he left the coal mine to stay fit. He testified that Petitioner's pulse oximetry at 98 percent was within normal range. He testified that his examination of the chest revealed no respiratory disease. Dr. Istanbouly testified that Petitioner's forced vital capacity was not suggestive of restrictive defect (Petitioner's Exhibit 1, pp 22-23). He testified that Petitioner's FEV1/FVC ratio was not consistent with obstructive defect (Petitioner's Exhibit 1, p 24).

Dr. Istanbouly testified that he only reviewed one chest x-ray of Petitioner, dated June 29, 2021. He testified that he is neither an A-reader or B-reader. He testified that he relies upon B readings in the medical-legal examinations he performs (Petitioner's Exhibit 1, p 24). Dr. Istanbouly testified that he does not provide profusion ratings on the films he interprets for black lung. He testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he characterizes what he sees as mild or early pneumoconiosis, moderate or severe. He testified that he classified Petitioner's pneumoconiosis as mild or early. He testified that he cannot say whether the chest x-ray he reviewed had a profusion of 1/0 or 0/1 (Petitioner's Exhibit 1, p 25).

Dr. Istanbouly testified that a person must be a susceptible host to develop coal workers' pneumoconiosis and that not all coal miners develop it. Dr. Istanbouly testified that he was removed from the Department of Labor's approved list for black lung evaluations in 2019 due to delays in paperwork. He further testified that his sole diagnosis for Petitioner was simple coal workers' pneumoconiosis, though he acknowledged that the symptoms aligned with chronic bronchitis as well (Petitioner's Exhibit 1, p 25).

Dr. Henry K. Smith interpreted Petitioner's chest x-ray of June 29, 2021. He interpreted same as positive for simple coal workers' pneumoconiosis with early mild interstitial fibrosis, p/p, all zones involved bilaterally of profusion 1/0. Dr. Smith is a board certified radiologist and NIOSH B-reader (Petitioner's Exhibit 2).

Dr. Cristopher Meyer reviewed a PA chest x-ray of Petitioner dated June 29, 2021, from Harrisburg Medical Center. Dr. Meyer testified that the radiograph was quality 1. Dr. Meyer testified that the lungs were clear, with no small or large opacities. Dr. Meyer testified that he observed atherosclerotic calcification in the thoracic aorta but found no radiographic findings of coal workers' pneumoconiosis. Dr. Meyer testified that CT scans are more sensitive than plain radiographs in detecting pneumoconiosis and emphysema (Respondent's Exhibit 1, pp 40-41).

Dr. Meyer has been board certified in radiology since 1992 (Respondent's Exhibit 1, p 7). Dr. Meyer obtained his B-reader certification in 1999 (Respondent's Exhibit 1, p 19). Dr. Meyer testified that he was encouraged to take the B-reader examination by Dr. Jerome Wiot, who was involved in the development of the original B-reader program (Respondent's Exhibit 1, pp 19-20). Dr. Meyer testified that the B-reader course consists of a syllabus with images provided by NIOSH, and that he was actively involved in revising the syllabus and designing the new B-reader exam (Respondent's Exhibit 1, pp 31-32). Dr. Meyer is currently the co-director of the ACR B-reader course and has served on the ACR Pneumoconiosis Task Force, which completed a new syllabus and examination for the B-reading program (Respondent's Exhibit 1, p 32).

Dr. Meyer testified that the B-reader course was a weekend training program involving lectures on the B-reading classification system, practice case review, and an examination. Dr. Meyer testified that the B-reader faculty are experienced senior level B-readers, typically academic radiologists. Dr. Meyer testified that the old B-reader certification exam was six hours long with 120 chest x-rays to classify, and the pass rate was approximately 60 percent. The current exam consists of 24 multiple choice questions and 72 cases within a five hour time limit. Dr. Meyer testified that radiologists generally have a ten percent higher pass rate than other specialists (Respondent's Exhibit 1, pp 32-34).

Dr. Meyer testified that B-readers first evaluate film quality before interpreting an x-ray. He testified that underexposed films can accentuate pulmonary vasculature, which may be mistaken for nodules, while overexposed films may artificially eliminate small opacities (Respondent's Exhibit 1, pp 26-27). Dr. Meyer testified that the B-reader form classifies lung abnormalities based on opacity type, size, and distribution. He testified that coal workers' pneumoconiosis is typically characterized by small, round opacities, while asbestosis and other pulmonary fibrotic diseases present with small, irregular opacities. He testified that small particles like coal and silica are an upper lung zone predominant process (Respondent's Exhibit 1, pp 28-29).

Dr. Meyer testified that profusion measures the density of small opacities in the lung, ranging from 0/0 (normal) to 3/3 (most severe). He testified that a 1/0 profusion score is the threshold for a positive B-reading, while a 0/1 score is still considered negative (Respondent's Exhibit 1, pp 30-31). Dr. Meyer testified that distinguishing between a 1/0 and a 0/1 reading is a critical component of B-reading and is a point of emphasis in the course. He testified this distinction is one of the most challenging distinctions to be made in the field of radiology (Respondent's Exhibit 1, pp 34-35).

Dr. Meyer testified that in evaluating chest x-rays, he assumes that the worker has sufficient exposure history to warrant a B-reading but does not consider the duration of exposure to avoid bias (Respondent's Exhibit 1, p 43). Dr. Meyer testified that the presence of coal workers' pneumoconiosis on an x-ray can develop over years, with screening typically conducted at five year intervals (Respondent's Exhibit 1, pp 44-45). Dr. Meyer testified that a miner's risk of developing coal workers' pneumoconiosis increases with greater dust exposure, but other factors, such as dust composition, may also contribute (Respondent's Exhibit 1, p 42). Dr. Meyer testified that when a miner's x-ray transitions from negative to positive for pneumoconiosis, the precise timing of the change cannot be determined without intermediate films (Respondent's Exhibit 1, p 44).

Dr. Meyer testified that the gold standard for diagnosing lung disease is pathological review rather than radiology (Respondent's Exhibit 1, p 54). He testified that if he finds a chest x-ray negative that would not necessarily rule out that the miner may have pneumoconiosis pathologically (Respondent's Exhibit 1, p 83). Dr. Meyer testified that it would be fair to say that all long term coal miners are going to come out of the mine with some dust deposit trapped in their lungs; however, the majority of those will not have changes in their lungs that qualify for coal workers' pneumoconiosis (Respondent's Exhibit 1, p 60).

Dr. Meyer testified that an individual must be a susceptible host to develop pneumoconiosis, so even a miner with a 61 year exposure would not develop pneumoconiosis unless they were a susceptible host (Respondent's Exhibit 1, p 97). Dr. Meyer testified that once exposure ceases, simple pneumoconiosis generally does not progress (Respondent's Exhibit 1, p 98).

Dr. Meyer testified that one of the issues with interpreting a chest x-ray for pneumoconiosis is making sure the individual who is interpreting the study has ample experience reading them to be able to sort out what the background variation is for normal. Dr. Meyer testified that part of trying to figure out whether or not there is an abnormality in the lung is recognizing the large spectrum of normal which is why someone like Dr. Meyer spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal (Respondent's Exhibit 1, p 56). Dr. Meyer testified that he reads between 150 to 200 chest x-rays in a week and depending upon the business of the service, he reads 50 to 70 chest CT scans (Respondent's Exhibit 1, p 15).

Dr. David Rosenberg conducted a review of medical records and chest imaging regarding Petitioner at the request of Respondent's counsel (Respondent's Exhibit 3, pp 10-11). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical

school, he completed a pulmonary fellowship at the National Institutes of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980 (Respondent's Exhibit 3, p 4). In 1995, he received his board certification in occupational medicine (Respondent's Exhibit 3, p 5). Dr. Rosenberg has been a B-reader since July, 2000, and has been recertified six times since then, with his current certification valid through January 31, 2028 (Respondent's Exhibit 3, pp 6-7). He is a member of the American Thoracic Society and the American College of Chest Physicians (Respondent's Exhibit 3, p 7). Dr. Rosenberg has lectured on interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing, and occupational lung disease (Respondent's Exhibit 3, p 9). He treats patients in his clinical practice who have black lung (Respondent's Exhibit 3, p 10).

Dr. Rosenberg reviewed a PA chest x-ray of Petitioner dated June 29, 2021, from Harrisburg Medical Center. Dr. Rosenberg testified that the film quality was 1 and that there were no findings of pneumoconiosis. He assigned a profusion rating of 0/0 (Respondent's Exhibit 3, p 27). Dr. Rosenberg testified that he performed his B-reading of Petitioner's chest x-ray by comparing it to standard ILO films, as required for a proper reading (Respondent's Exhibit 3, p 28).

Dr. Rosenberg testified that a proper reading of a chest x-ray for pneumoconiosis first requires the reader to grade the quality of the film to ensure it is readable. He testified that the next step is to compare the film to the standard ILO films. He testified that after comparing the film, the reader must grade the degree of parenchymal abnormalities and identify the lung zones involved. He testified that the profusion ratings quantify the intensity of the changes present on a twelve-point scale (Respondent's Exhibit 3, p 28). He testified that the purpose of the profusion rating is to avoid imprecise descriptive terms such as mild or early pneumoconiosis, as what is considered mild or early pneumoconiosis for one person may not be the same for another, but all A- and B-readers know what a profusion of 1/0 means (Respondent's Exhibit 3, p 29).

Dr. Rosenberg testified that Petitioner's pulmonary function testing performed at Stat-Care on June 14, 2022, was normal. He testified that he agreed with Dr. Istanbouly who testified that Petitioner suffers from no obstruction or restriction. Dr. Rosenberg testified that if Table 5-4 of the *AMA Guides* were applied to the results from Petitioner's testing, he would fall under class 0 impairment (Respondent's Exhibit 3, p 24). Dr. Rosenberg testified that Petitioner's diffusion capacity was normal, measuring at 90 percent of predicted, which indicated no impairment in gas exchange or damage to the alveolar capillary membrane (Respondent's Exhibit 3, pp 25-26). Dr. Rosenberg concluded that Petitioner was capable of heavy manual labor from a respiratory standpoint (Respondent's Exhibit 3, p 27).

Dr. Rosenberg testified that the objective test results do not support Petitioner's subjective complaints of exertional dyspnea. He testified that Petitioner does not have dyspnea from a pulmonary perspective (Respondent's Exhibit 3, p 101). He testified that he would look to other causes for exertional shortness of breath such as deconditioning (Respondent's Exhibit 3, p 27).

Dr. Rosenberg testified that chest imaging is not a factor, let alone a key factor, in assessing pulmonary impairment under the *AMA Guides, Sixth Edition*, Chapter 5 (Respondent's Exhibit 3, p 21). He testified that to determine whether an individual suffers from pulmonary impairment in respiratory function, he looks to a valid pulmonary function test (Respondent's Exhibit 3, pp 20-

21). Dr. Rosenberg testified that an individual must be a susceptible host to develop coal workers' pneumoconiosis and that not all coal miners develop pneumoconiosis (Respondent's Exhibit 3, pp 21-22). He testified that duration and intensity of exposure are not determinative if an individual is not a susceptible host (Respondent's Exhibit 3, p 23).

Dr. Rosenberg testified that studies have shown a 70 percent concordance between chest x-ray findings and pathologic evidence of pneumoconiosis. He testified that while a majority of individuals with pathologic disease will have radiographic evidence, approximately 30 percent may not (Respondent's Exhibit 3, p 36). Dr. Rosenberg testified that a person could have coal workers' pneumoconiosis despite a negative chest x-ray reading (Respondent's Exhibit 3, p 88).

Dr. Rosenberg testified that Petitioner's medical records did not contain a diagnosis of pneumoconiosis (Respondent's Exhibit 3, p 22). He testified that Petitioner's treatment records outline many gastrointestinal issues. He testified that Petitioner's records do not describe chronic respiratory problems separate from a chronic cough related to the 2003 mining fire. (Respondent's Exhibit No. 3, pp 30-31). Dr. Rosenberg testified that Petitioner's pulmonary function tests were normal, without obstruction or restriction, and Petitioner has normal diffusing capacity measurements. He testified that Petitioner's x-ray does not reveal parenchymal changes of a pneumoconiosis. He testified that Petitioner would be considered to have Class 0 impairment based on the *AMA Guides, Sixth Edition.* The *AMA Guides* reveal an individual falls into Class 0 when his FEV1/FVC ratio is 75% of predicted or greater, which is something different than 75% (Respondent's Exhibit 3, pp 23-35). Dr. Rosenberg concluded with a reasonable degree of medical certainty that Petitioner does not have a respiratory disorder related to coal mine dust exposure and has no impairment or disability from a pulmonary standpoint (Respondent's Exhibit 3, p 31).

Medical Records of Stat-Care were admitted into evidence. Pulmonary function testing performed on June 14, 2022, revealed forced vital capacity of 5.87L (147%), FEV1 of 4.36L (136%) and an FEV1/FVC ratio of 74, 92% of predicted. Diffusing capacity testing revealed DLCO of 24.51mL/min/mmHg (90%) (Respondent's Exhibit 2, p 2). The interpretation was normal spirometry and normal diffusion capacity (Respondent's Exhibit 2, p 4).

Medical Records of SIH Harrisburg were admitted into evidence. A letter authored by Chirag Dave, MD, on November 7, 2003, indicates Petitioner was seen by Dr. Dave. Petitioner related he was involved with a chemical fire at work in August of 2003. It was noted he had minimal cough and occasional shortness of breath. Petitioner related that after his exposure to the fire, he started coughing up phlegm and has been short of breath on exertion. The assessment was reactive airway disease which may be secondary to chemical exposure (Respondent's Exhibit 4, pp 328-330). Petitioner was seen on December 10, 2003, for follow-up on his reactive airway disease. He reported he was not getting better. He denied improvement with inhalers. He reported he is still coughing, specifically at night. He reported he is no longer exposed to glue or chemicals, though he still worked in the coal mines. Assessment was reactive airway disease directly related to his smoke exposure. Petitioner was seen on November 4, 2005, for a cough. He related it has been occurring in an intermittent pattern for two years. He reported it has been a problem since he was involved in a chemical fire two years prior. Examination of chest was normal. Assessment was reactive airway disease (Respondent's Exhibit 4, p 324-327).

Petitioner was seen on July 21, 2007, for shortness of breath in a persistent pattern for six days. He described the shortness of breath as mild and that it occurred on exertion. Review of respiratory was positive for cough, difficulty breathing, and sputum production. Examination of chest was normal (Respondent's Exhibit 4, p 309). Petitioner was seen on July 23, 2007. He related chest discomfort and some exertional dyspnea. Review of respiratory was positive for cough, difficulty breathing, and sputum production. Examination of lungs was normal (Respondent's Exhibit 4, p 307). Petitioner underwent chest x-ray on that same date. It was found that the lung fields were clear (Respondent's Exhibit 4, p 306). Petitioner was seen on September 15, 2007, for a cough. He related it had been occurring in a persistent pattern for nine days. The cough was described as productive of purulent sputum. The symptoms were associated with headache, hoarseness, and sore throat. Examination of chest revealed rhonchi present in left and right lung fields (Respondent's Exhibit 4, p 296).

Petitioner was seen on July 25, 2008. Review of respiratory was negative. Examination of chest was normal (Respondent's Exhibit 4, pp 293-294). Petitioner was seen on April 13, 2009, for abdominal pain. Review of respiratory was negative (Respondent's Exhibit 4, p 289). Petitioner underwent a CT of the abdomen/pelvis on April 14, 2009. It was noted that the lung bases are partially included on the study and same were negative for infiltrate or pleural fluid. Tiny benign calcified granulomas are noted at both lung bases (Respondent's Exhibit 4, p 282).

Petitioner was seen on January 6, 2011, for an eye issue. Review of respiratory was positive for cough. Examination of chest was normal (Respondent's Exhibit 4, p 267). Petitioner underwent a chest x-ray on July 19, 2011, and findings were clear lungs (Respondent's Exhibit 4, p 266).

Petitioner was seen on April 5, 2012, for a cough which started the prior day. He related the cough has been gradual and has been occurring in a persistent pattern for years. The cough was characterized as productive and purulent sputum. A history of asthma was noted. Examination of chest revealed expiratory wheeze in both lungs fields (Respondent's Exhibit No. 4, p 258). A chest x-ray performed on April 5, 2012, found lungs were clear of active infiltrate (Respondent's Exhibit No. 4, p 260). Petitioner was seen on May 31, 2012, for an insect bite. Review of respiratory was normal and examination of chest was normal (Respondent's Exhibit 4, p 257).

Petitioner was seen on December 2, 2013, for follow-up on excision of skin lesion. Review of respiratory was negative and examination of the chest was normal (Respondent's Exhibit 4, p 217). Petitioner was seen on December 11, 2013, for chest pain. Review of respiratory was negative and examination of the chest was normal (Respondent's Exhibit 4, pp 206-207). Petitioner was seen on December 31, 2013, for hypertension. Review of respiratory was negative and examination of the chest was normal (Respondent's Exhibit 4, p 198). Petitioner was seen on February 3, 2014. Review of respiratory was negative and examination of the chest was normal (Respondent's Exhibit 4, p 198).

Petitioner was seen on June 3, 2014, for productive cough for three weeks. Examination of chest revealed decreased breath sounds in both lung fields. Petitioner related he has had lung issues since he was involved in a mine fire (Respondent's Exhibit 4, pp 192-193). Petitioner underwent spirometry on June 3, 2014, and the interpretation was normal spirometry (Respondent's Exhibit

4, pp 196). A chest x-ray performed on that same date revealed lung fields were clear of infiltrate (Respondent's Exhibit 4, p 197).

Petitioner was seen on August 4, 2014. Review of respiratory was negative for chronic cough and exercise intolerance. Examination of chest was normal. Impression included extrinsic asthma which was described as stable, and Petitioner was not currently using any inhalers (Respondent's Exhibit 4, pp 184-185).

Petitioner was seen on February 9, 2015. Review of respiratory is negative and examination of chest is normal (Respondent's Exhibit 4, pp 181-182). Petitioner was seen on May 4, 2015, for cough, fever, and sore throat. He related the cough was a hacking cough and started suddenly three days prior. Examination of chest revealed expiratory wheezes in both lung fields. Assessment was asthma and bronchitis. It was noted that Petitioner had a history of getting severe asthma and he believed prophylactic antibiotics are beneficial (Respondent's Exhibit 4, pp 178-179).

Petitioner underwent a chest x-ray on October 30, 2015, and the finding was clear lungs (Respondent's Exhibit 4, p 171). Petitioner was seen on March 15, 2016, reporting he felt well with minor complaints. Review of respiratory was negative for cough and difficulty breathing (Respondent's Exhibit 4, pp 163-164). Petitioner was seen on September 15, 2016. Review of respiratory was negative. Examination of chest was normal (Respondent's Exhibit 4, pp 154-155). Petitioner was seen on March 16, 2017, for hyperlipidemia and hypertension. Review of respiratory was negative. Examination of chest was normal (Respondent's Exhibit 4, pp 150-151).

Petitioner was seen on September 19, 2017. Petitioner's history included a chronic cough which he related started with inhalation of fumes from a coal mine fire. Review of respiratory was negative. Examination of chest was normal (Respondent's Exhibit 4, pp 131-132). Petitioner was seen on April 2, 2018, for sleep apnea. Review of respiratory was negative and examination of lungs are clear bilaterally (Respondent's Exhibit 4, pp 122-123). Petitioner was seen on June 27, 2018, for a cough. The cough was described as a new problem that started one to four weeks prior. The cough was described as non-productive. Petitioner related that nothing aggravated the symptoms. Review of respiratory was positive for cough, but negative for shortness of breath and wheezing. Examination of chest revealed normal breath sounds (Respondent's Exhibit 4, pp 119-120).

Petitioner was seen on June 24, 2019. Review of respiratory was negative. Examination of the chest revealed lungs clear to auscultation bilaterally (Respondent's Exhibit 4, pp 111-113). Petitioner was seen on July 29, 2019, for GERD and hypertension. Review of respiratory was negative. Examination of the chest revealed lungs clear to auscultation bilaterally (Respondent's Exhibit 4, pp 83-85). Petitioner was seen on July 30, 2020, for an annual exam. Review of respiratory was negative for cough, shortness of breath, and orthopnea. Examination of the chest revealed clear respirations bilaterally. Assessment included hypertension and hyperlipidemia (Respondent's Exhibit 4, pp 76-79).

Petitioner was seen on September 8, 2021, for an annual examination. He denied cough, shortness of breath, and wheezing. Examination of the chest revealed lungs clear to auscultation bilaterally. No new respiratory or cardiac concerns were documented during this visit (Respondent's Exhibit

4, pp 65-68). Petitioner was seen on March 13, 2023, for cough, headache, and nasal congestion (Respondent's Exhibit 4, p 46). Examination of chest revealed normal breath sounds, no wheezing or rhonchi. Diagnosis was fatigue and bronchitis for which the Petitioner was prescribed amoxicillin, prednisone, and codeine-guaifenesin (Respondent's Exhibit 4, p 48).

On May 24, 2024, Petitioner was seen at SIH Harrisburg Primary Care for complaints of fatigue and chest pain. Review of systems was positive for chronic shortness of breath and chest pain (Respondent's Exhibit 4, p 35). Examination of chest revealed normal breath sounds (Respondent's Exhibit 4, p 36). An electrocardiogram (EKG) was performed on the same date. The interpreting physician noted a normal EKG (Respondent's Exhibit 4, p 41).

Petitioner underwent a cardiology consultation on May 30, 2024, reporting worsening exercise intolerance over recent weeks and intermittent episodes of chest tightness rated at 3/10 severity, resolving with rest, prior history of inhalation lung injury from chemical exposure in the coal mine, and reactive airway disease. Petitioner's wife reported he had 45% damage to the lungs. An EKG performed that day showed normal sinus rhythm (Respondent's Exhibit 4, p 7). Review of respiratory was positive for cough, snoring and sputum production. Examination of lungs were clear to auscultation bilaterally (Respondent's Exhibit 4, p 8).

Medical Records of Harrisburg Medical were admitted into evidence. Petitioner underwent a chest x-ray on July 19, 2011, which found the lungs to be clear (Respondent's Exhibit 5, p 266). Petitioner was seen at the emergency department on March 31, 2013, for abdominal pain. Review of respiratory was negative. Examination of lungs revealed clear breath sounds (Respondent's Exhibit 5, pp 164-166). Petitioner was evaluated on April 2, 2013, and on examination the lungs were clear (Respondent's Exhibit 5, p 186).

Petitioner underwent a CT scan of the abdomen and pelvis on April 24, 2013, which found that the lung bases included on the study were negative for infiltrate, pleural fluid, or mass. Tiny benign calcified granulomas left lung base posteriorly were noted (Respondent's Exhibit 5, p 158). Petitioner underwent an excision of squamous cell carcinoma of right earlobe on October 1, 2013 (Respondent's Exhibit 5, p 113). Petitioner underwent a chest x-ray on October 30, 2015, which found the lungs to be clear (Respondent's Exhibit 5, p 55).

Petitioner underwent lumbar spine imaging on February 1, 2016. Impression was no acute bone abnormality (Respondent's Exhibit No. 5, p 48). Petitioner was seen for a physical therapy evaluation on February 4, 2016. Petitioner reported he was moving items at work and felt pain across his lower back (Respondent's Exhibit 5, p 40).

Conclusion of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did not sustain an occupational disease arising out of and in the course of his employment and that his current condition of ill-being is not causally related to an occupational exposure.

In support of these conclusions the Arbitrator notes the following:

Dr. Istanbouly examined Petitioner on March 22, 2022, at the request of Petitioner's counsel. Dr. Istanbouly diagnosed Petitioner with simple coal workers' pneumoconiosis. Dr. Istanbouly did not personally review Petitioner's prior treatment records. Dr. Istanbouly is not a B-reader. Dr. Istanbouly described how he interprets a film for black lung. He determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate or severe. He classified what he saw on Petitioner's chest x-ray as mild or early pneumoconiosis. However, Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms as to what is seen on the film such as mild or early pneumoconiosis. He testified that what mild or early means to one person may not be the same as what it means to another. He testified that all A and B-readers know what a profusion of 1/0 means. Dr. Meyer testified that distinguishing between a 1/0 and 0/1 profusion is one of the most challenging distinctions to make in the field of radiology. Dr Istanbouly testified that he could not say whether the chest x-ray he reviewed had a profusion of 1/0 or 0/1.

Dr. Rosenberg, a board certified pulmonologist and B-reader, reviewed Petitioner's medical records and imaging studies. He interpreted the June 29, 2021, chest x-ray as negative for pneumoconiosis, assigning a profusion rating of 0/0. He conducted his B-reading using the ILO classification system and performed a side-by-side comparison with standard ILO films. Dr. Rosenberg also reviewed Petitioner's medical records. He testified that Petitioner's records do not describe chronic respiratory problems separate from a chronic cough related to the 2003 mining fire. Dr. Rosenberg testified that Petitioner's pulmonary function tests were normal. Both Dr. Rosenberg and Dr. Istanbouly agree that Petitioner suffers from no respiratory obstruction or restriction.

Dr. Meyer reviewed Petitioner's chest x-ray dated June 29, 2021. He testified that it was of diagnostic quality and showed no radiographic evidence of coal workers' pneumoconiosis. Dr. Meyer testified to his credentials and expertise in interpretation of chest x-rays. Dr. Meyer is not only a certified B-reader, but he also served on the ACR Pneumoconiosis Task Force, which completed a new syllabus for the B-reading course as well as a test that was delivered to NIOSH in 2017 to be used for certification as a B-reader. There is no evidence to counter Dr. Meyer's expertise.

While Dr. Smith is also a B-reader, his CV indicated he failed two out of eight of his recertification exams as a NIOSH Certified B-reader. His opinion in the record was only that the profusion rating was a 1/0.

Further, Petitioner's medical history and pulmonary function testing do not support a diagnosis of coal workers' pneumoconiosis, or any other occupational lung disease causally related to his employment. Treatment records revealed that Petitioner's pulmonary function testing was consistently within normal limits, with no significant obstructive or restrictive ventilatory impairment. Pulmonary function testing performed on June 14, 2022, at Stat-Care showed normal spirometry and normal diffusion capacity, indicating no impairment in gas exchange or damage to the alveolar capillary bed. Dr. Rosenberg testified that these results do not support Petitioner's complaint of exertional dyspnea. Both Dr. Rosenberg and Dr. Istanbouly acknowledged that exertional shortness of breath can result from causes unrelated to respiratory diseases, such as deconditioning.

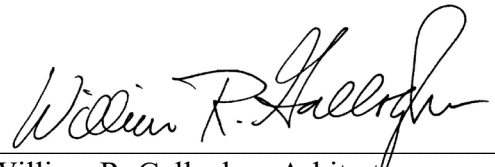
The Arbitrator notes the testimony of Dr. Meyer that a negative x-ray cannot rule out the existence of coal workers' pneumoconiosis pathologically and the testimony of Dr. Rosenberg that a person could have coal workers' pneumoconiosis despite a negative chest x-ray reading. The Arbitrator finds that such testimony is not the same as saying that Petitioner, in fact, suffers from the disease. It is not Respondent's duty to produce evidence that Petitioner did not have coal workers' pneumoconiosis. Rather the issue is whether Petitioner has proven that he does.

While Dr. Istanbouly testified that, given Petitioner's work schedule of 12 hour shifts, six days per week for 24 years, it was reasonable to estimate that his total exposure exceeded that of an individual with 34 years of exposure working standard 40 hour weeks, and would indicate many more than 34 years of actual exposure. However, Dr. Istanbouly, Dr. Meyer, and Dr. Rosenberg all acknowledged that one must be a susceptible host to develop coal workers' pneumoconiosis, so the Petitioner's duration and intensity of exposure would be irrelevant if he was not a susceptible host.

Based upon the evidence in this record, the Arbitrator concludes Dr. Meyer and Dr. Rosenberg both B-readers and their testimony is found to be more credible than that of Dr. Istanbouly.

In regard to disputed issues (L) and (O) the Arbitrator makes the following conclusion of law:

The Arbitrator makes no conclusion of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).



MARCH 6 2025

William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018626
Case Name	Ricardo Escobedo Rosas v. Source One Staffing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0287
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mario Encinas
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 10/7/2026

/s/Stephen Mathis, Commissioner

Signature

26IWCC0287

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO ESCOBEDO ROSAS,

Petitioner,

vs. NO: 20 WC 018626

SOURCE ONE STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and nature and extent of disability and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms in part and reverses in part the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission additionally makes the following corrections to the Arbitrator's decision. The Commission corrects the date on Issue K, sentence 4, and strikes "1/18/22" and replaces with "7/23/20". On Issue L factor (iii), the Commission strikes "making him susceptible to re-injury to his lumbar spine." On Issue L factor (iv), the Commission adds the sentence "There was no evidence as to how the permanent restrictions would affect future earning capacity" before the last sentence.

Petitioner was a 58-year-old male employed by Respondent as a packer. He testified in Spanish at hearing through an interpreter. On July 22, 2020, Petitioner was lifting a 50 lb. bag of flour when he felt a pop in his left shoulder and elbow. The parties stipulated to the issues of accident and notice.

Petitioner promptly sought medical treatment at Tyler Medical Services where he was diagnosed with a strain/sprain of the left shoulder and left elbow and received conservative treatment. He was restricted to no work with his left arm. Petitioner transferred his medical care to La Clinica commencing August 1, 2020, and began a course of physical therapy. It is notable that Petitioner was a Type 2 diabetic. The La Clinica physician documented causal connection.

On August 12, 2020, Petitioner had an MRI of the left elbow which demonstrated a full thickness tear of the biceps at the distal insertion with mild proximal retraction. An MRI of the left shoulder revealed a partial tear of the subscapularis and acromioclavicular arthrosis. He was referred for an orthopedic consult by La Clinica.

Petitioner had an initial consult with Dr. Thomas Poepping at GT Orthopedics on August 21, 2020. Dr. Poepping identified the left biceps tear as an indication for reattachment surgery. Petitioner consented and Dr. Poepping sought approval for the procedure. He continued Petitioner's off work status.

Respondent sent Petitioner for a Section 12 evaluation with Dr. Brian McCall on November 9, 2020. Dr. McCall agreed that the biceps tear was causally connected to the work duties of July 22, 2020. Dr. McCall also agreed with the recommendation for surgical reattachment of the left biceps tear. In Dr. McCall's opinion the pathology of the left shoulder evident on the MRI was age related and non-traumatic in origin. He cleared Petitioner for return to work with limitation to below the shoulder and lifting limited to 20 lbs. Dr. McCall opined that MMI would not be reached until 6 months from the left distal biceps repair "provided an uncomplicated post-operative course."

Petitioner underwent a left distal biceps repair on April 20, 2021, performed by Dr. Poepping. He underwent a prolonged course of post-operative physical therapy and was kept off work. He had continuing complaints of elbow pain and weakness.

Dr. Poepping ordered another MRI to identify the source of the continuing elbow symptoms. An open MRI was performed on October 8, 2021, which demonstrated post-surgical changes and reported the distal biceps as grossly intact. Dr. Poepping's interpretation of the imaging led to a concern that there was a re-tear of the distal biceps tendon and he recommended surgical revision.

Respondent requested another Section 12 evaluation which was performed by Dr. McCall on November 22, 2021. Dr. McCall recommended further evaluation for better imaging with a closed high-field MRI to further assess the status of the distal biceps tendon attachment.

A high-field MRI was performed on March 16, 2022, and reported the absence of a full-thickness tear of the distal biceps tendon. Petitioner had a follow-up with Dr. Poepping on March 23, 2022, and reported continuing pain in both his left elbow and shoulder. The surgery which had been recommended by Dr. Poepping based upon the Open MRI was deferred on the basis of the more sophisticated imaging. Dr. Poepping administered a steroid injection into Petitioner's left shoulder.

On April 20, 2022, Petitioner was again seen by Dr. Poepping. On this date Dr. Poepping ordered an FCE to establish Petitioner's level of functionality to determine appropriate permanent restrictions. Petitioner was continued off work and directed to return to the clinic in 4 weeks.

A third Section 12 report from Dr. McCall dated July 13, 2022, stated the opinion that Petitioner had achieved MMI effective March 16, 2022, based upon the 3T MRI imaging. According to Dr. McCall the prior diagnosis of recurrent tear was made in error based upon a poor imaging study.

Dr. McCall's report stated that Petitioner could return to full-duty work without restrictions at that time.

On June 21, 2023, Petitioner returned to Dr. Poepping. Petitioner had not yet obtained the FCE ordered on April 20, 2022. Dr. Poepping re-ordered the FCE to formulate permanent restrictions. Petitioner remained off-work. He was directed to return for follow-up in 6 weeks to review the FCE report.

A valid Functional Capacity Evaluation was performed at ATI on August 23, 2023. Petitioner's capabilities fell into the medium job demand level i.e. occasional lifting of 20 lbs. to 50 lbs. It was noted that although Petitioner's capabilities met the DOT level, they fell below his self-described job level of lifting 50 lbs. It was recommended that Petitioner discuss the deficits and continuing complaints demonstrated at the FCE with his attending physician.

Petitioner returned for a final visit to Dr. Poepping on September 6, 2023. Dr. Poepping noted the valid FCE and placed permanent restrictions consistent with the FCE. He was discharged from treatment.

The Arbitrator awarded maintenance benefits of $320.00 per week for 60 weeks commencing September 6, 2023, through October 31, 2024, pursuant to Section 8(a) of the Act. The Commission hereby reverses this award of benefits. Petitioner claimed entitlement to maintenance benefits on the Request for Hearing. The claim was disputed by Respondent.

The Commission notes that the Arbitrator's Conclusions of Law contains no analysis and states no facts that would lend support to an award of maintenance. Since maintenance is awarded incidental to vocational rehabilitation, an employer is obligated to pay maintenance only "while a claimant is engaged in a prescribed vocational-rehabilitation program " *Euclid Bev. v. Ill. Workers' Comp. Comm'n.,* 219 IL App (2d) 180090WC para 29-30, citing *W.B. Olsen, ,Inc.,* 2012 IL. App.(1st) 113129WC, para.39. An employee's self-directed job search or vocational training may constitute a vocational-rehabilitative program. *Id.,* citing *Roper Contracting v. Industrial Comm'n.,* 349 Ill.App.3d 500, 506, 812 N.E.2d 65, 285 Ill. Dec. 476 (2004).

The Arbitrator concluded that "Since his release from treatment with permanent restrictions by Dr. Poepping, Petitioner had found 1 light duty job with a paper company. Unfortunately, he only worked a total of 4 days over a 2-week period. He has been conducting a diligent job search without success." The Commission views the evidence differently and finds that there is no evidence in the record that Petitioner engaged in a job search or underwent any vocational rehabilitation following his July 22, 2020, work related accident.

The record of Dr. Poepping, Petitioner's treating orthopedic surgeon reflects that Petitioner achieved MMI on September 6, 2023. He was discharged from care with permanent restrictions based upon a valid FCE that was performed on August 23, 2023, at ATI. Petitioner was found to be at a medium job demand level and met the DOT level for his position. His permanent restrictions provided for occasional lifting of 20 to 50 lbs. Petitioner testified that he did not return to work for Respondent after reaching MMI. Instead, he became employed at a paper company for a period of two weeks. He was assigned very little work and was then laid off.

Petitioner testified on direct examination that he engaged in a job search. There was no evidence introduced to support any self-directed job search. There was no detail provided concerning the job search. There was no request made for vocational rehabilitation. Petitioner provided vague testimony on the job search which was contradicted on cross examination.

Petitioner testified on cross examination that he neither worked nor looked for work after April 20, 2022. He further testified on cross examination that he did not look for work after June 21, 2023. Petitioner testified that he has been under medical restrictions since suffering a stroke in May 2025 that impacted his vision and balance. Petitioner testified that he has not sought employment since suffering the stroke. This testimony contradicts Petitioner's vague assertion on redirect examination that he looked for work between June 21, 2023, and May 2025. T 26.

The Commission reverses the Arbitrator's award of maintenance benefits on the basis of the foregoing analysis. The Commission affirms all else with the corrections specified in the foregoing Decision and Opinion on Review.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award of maintenance benefits is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $320.00 per week for a period of 163 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $288.00 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 35% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $34,642.95 to La Clinica, $2,021.36 to American MRI, $1,125.05 to G & T Orthopedics, $8,855.94 to Summerlin Medical, $6,283.72 to Fullerton Kimball Surgical, $1,656.47 to Fulleron Kimball Medical, $108.01 to Bright Light Medical Imaging, $1,279.92 to Lakeshore Open MRI, and $1,190.24 to ATI Physical Therapy, for medical expenses under §8(a) and 8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 7 2026

o:8/25/26

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	20WC018626
Case Name	Ricardo Escobedo Rosas v. Source One Staffing
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Mario Encinas
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 12/18/2025

/s/ Paul Seal, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 16 2025 3.50%

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

Ricardo Escobedo
Employee/Petitioner

v.

Source One Staffing
Employer/Respondent

Case # **20** WC **018626**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **11/10/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **07/22/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**24,960.00**; the average weekly wage was $**480.00**.

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

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

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

Respondent shall be given a credit of $**20,160.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Medical benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**34,642.95** to **La Clinica**, $**2,021.36** to **American MRI**, $**1,125.05** to **G&T Orthopaedics**, $**8,855.94** to **Summerlin Medical**, $**6,283.72** to **Fullerton Kimball Surgical,** $**1,656.47** to **Fullerton Kimball Medical,** $**108.01** to **Bright Light Medical Imaging,** $**1,279.92** to **Lakeshore Open MRI,** and $**1,190.24** to **ATI Physical Therapy**, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $**320.00**/week for **163** weeks, commencing **07/23/20** through **09/05/23**, as provided in Section 8(b) of the Act.

Maintenance Periods
Respondent shall pay Petitioner maintenance benefits of $**320.00**/week for **60** weeks, commencing **09/06/23** through **10/31/24**.

Nature and Extent
Respondent shall pay Petitioner permanent partial disability benefits of $**288.00**/week for **175** weeks, as the injury resulted in a **35%** Loss of Use of the **Man as a Whole.**

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

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



Signature of Arbitrator

DECEMBER 18 2025

STATEMENT OF FACTS

ACCIDENT

Petitioner, Ricardo Escobedo, was 58 years of age, single with no minor dependent children at the time of the accident. Petitioner testified through a Spanish language interpreter. Petitioner was working on July 22, 2020 for Respondent Source One Staffing. Petitioner was performing his job duties and while lifting a 50-pound bag of flour, felt a "pop" in his left elbow and shoulder. Notice of the accident was provided to Respondent. Petitioner was then sent for initial treatment to Tyler Medical Services.

SUMMARY OF MEDICAL TREATMENT

Tyler Medical Services (PX1)

07/22/20: Petitioner presents with 10/10 pain, he is diagnosed with left elbow and left shoulder strain. X-Rays were taken, he was given an arm sling, ice, naproxen and returned to work with one handed duty only; no use of left arm.

07/27/20: Petitioner follows up with 7/10 pain in his shoulder and elbow. The prior X-ray is negative for fracture. He is to continue taking Naproxen, start cyclobenzaprine, apply moist heat, no more sling and begin a home exercise program and remain on one handed work restriction.

La Clinica (PX2)

08/01/20: Petitioner's left shoulder pain is between 6/10-8/10, his left elbow pain is between 7/10-8/10 and it radiates to forearm and thumb. He is diagnosed with left shoulder sprain/strain, left elbow sprain/strain and a left wrist strain. He is ordered to start physical therapy 3 times per week, referred for an orthopedic consult and to undergo an MRI. Petitioner's work restrictions are 5-pound maximum push/pull/lift/carry, no ladders, and rest as needed.

Physical Therapy: 08/01, 08/03, 08/05, 08/07, 08/13 and 08/17.

American Diagnostic MRI (PX3)

08/12/20: Petitioner has MRIs of the left shoulder and left elbow:

1. Left shoulder: "suspected partial articular surface tearing of the distal subscapularis tendon; Supraspinatus tendinosis"; AC joint arthropathy and mild subacromial/subdeltoid bursistis.
2. Left elbow: "full-thickness tear of the biceps tendon at the distal insertion with proximal tendon retraction".

La Clinica
08/17/20: Petitioner follows up. His left elbow pain is between 6/10 to 10/10 and radiating to forearm and thumb. His left shoulder pain is between 5/10 to 6/10. Petitioner has difficulty with his activities of daily living. He is ordered to continue physical therapy and is taken off of work.

Physical Therapy: 8/19, 8/24, 8/26, 8/27, 8/31, 9/2, 9/4, 9/9, 9/10, 9/11, 9/14, 9/16 and 9/17.

G&T Orthopaedics (PX4)
08/21/20: Petitioner see Dr. Thomas Poepping. Dr. Poepping diagnoses Petitioner with a left distal biceps tendon rupture, a left shoulder partial-thickness subscapularis tear and a left shoulder acromioclavicular arthrosis. He recommends surgery for the left elbow, keeps Petitioner off of work and orders him to continue physical therapy.

La Clinica
09/17/20: Petitioner comes in for a follow up and complains of left elbow pain between 4/10 to 6/10 (improvement with radiating pain), left shoulder pain from 5/10 to 6/10, continued difficulty with ADLs. The diagnosis is updated to: left biceps muscle tendon rupture; left shoulder Supraspinatus partial-thickness tear and left shoulder bursitis. He is ordered to continue physical therapy and to remain off of work.

G&T Orthopaedics
09/18/20: Surgical authorization is pending. Petitioner's symptoms are unchanged. He is given a prescription for tramadol.

La Clinica Physical Therapy: 9/23, 9/24, 9/28, 9/30, 10/1, 10/5, 10/7, 10/8 and 10/12.

La Clinica
10/12/20: Petitioner follows up with left elbow pain at 2/10 to 6/10, left shoulder pain at 0/10 to 6/10. He is ordered to continue physical therapy, work status is deferred to Dr. Poepping.

Physical Therapy: 10/14, 10/15, 10/21, 10/22, 10/26, 10/28, 10/29, 11/2, 11/4, 11/5, 11/11, 11/12, 11/16, 11/18, 11/25 and 11/26.

11/26/20: Follow up with complaints of pain in the left elbow at 4/10 and left shoulder pain at 2/10. Petitioner is ordered to continue physical therapy and is off of work.

Physical Therapy: 11/30, 12/2, 12/7, 12/9 and 12/14.

Dr. Brian McCall – Respondent's IME #1 (RX1)
11/09/20: Opinions: current diagnosis is rupture left distal biceps tendon, and exacerbation rotator cuff tendinosis left shoulder. Current complaints and diagnosis within the left elbow are causally related to his work injury on 7/22/20. Treatment for the left shoulder with oral anti-inflammatories and physical therapy would be appropriate for an exacerbation of rotator

cuff tendinopathy. Due to ongoing symptoms he may benefit from a subacromial injection. No further structured physical therapy for *left shoulder* would be medically necessary, and the claimant may continue a home exercise program (emphasis added). Recommendation for surgical intervention on the left elbow is medically appropriate and related to the injury from 7/22/20. Maximum medical improvement would not be achieved until 6 months from left distal biceps tendon repair provided uncomplicated postoperative course.

Bright Light Medical Imaging (PX6)
04/10/21: Petitioner presents for chest X-Rays. They reveal: No acute cardiopulmonary abnormality.

Lakeshore Surgical Center (PX7)
04/20/21: Petitioner undergoes surgery in the form of a left distal biceps tendon repair.

G&T Orthopaedics
04/28/21: Petitioner follows up post left distal biceps tendon repair. He is given tramadol for pain, kept off of work, arm splint is removed and he is put into a sling. He is ordered to start physical therapy.

05/26/21: Petitioner follows up with pain in left elbow, but it is improving. He is ordered to start physical therapy and is kept off of work.

La Clinica
06/03/21: Petitioner complains of left elbow pain at 2/10 to 6/10 and left shoulder pain at 0/10 to 4/10. He is ordered to continue physical therapy, kept off of work and start a home exercise program.

Physical Therapy: 6/3, 6/8, 6/9, 6/10, 6/14, 6/15, 6/16, 6/21, 6/22, 6/23, 6/28, 6/30, 7/6 and 7/7.

G&T Orthopaedics
06/23/21: Petitioner complains of left elbow discomfort. He ordered to continue physical therapy and using light weights. He is again kept off of work.

La Clinica
07/07/21: Petitioner complains of pain in his left biceps and forearm at 6/10. He continues physical therapy.

Physical Therapy: 7/8, 7/12, 7/14, 7/15, 7/19, 7/20, 7/21, 7/26, 7/27, 7/28, 8/2 and 8/4.

La Clinica
08/04/21: Petitioner's pain level is at 4-5/10 and his left arm fatigues quickly. He continues physical therapy.

Physical Therapy: 8/5, 8/9, 8/10, 8/12, 8/16, 8/17, 8/18, 8/23, 8/24, 8/25, 8/31 and 9/1.

G&T Orthopaedics
08/11/21: Petitioner's progress is slow with continued pain in the left elbow and forearm. There is proximal migration of the biceps muscle belly. Patient is still very weak, started strengthening in physical therapy and has dorsal forearm pain. If patient does not progress, we will consider another MRI to see adhering of the tendon to bone. He is to continue physical therapy and kept off of work.

La Clinica
09/01/21: Petitioner feels a lot better. His pain ranges from 0/10 to 4-5/10. He continues physical therapy.

Physical Therapy: 9/2, 9/7, 9/9, 9/14, 9/16, 9/21, 9/23, 9/28, 9/30, 10/4, 10/5, 10/7 and 10/12.

G&T Orthopaedics
09/15/21: At this follow up, patient reports weakness and pain in left shoulder, elbow and wrist. He has a positive Neer's and Hawkins'. Dr. Poepping ordered MRI of left elbow, continued physical therapy and off of work.

09/29/21: No MRI yet and symptoms are unchanged. He is kept off of work.

Lakeshore Open MRI (PX8)
10/08/21: MRI of left elbow shows:
1. Postsurgical changes described of reattachment of a biceps tendon rupture; tendon grossly intact
2. Mild posttraumatic soft tissue bruising

La Clinica
10/12/21: Petitioner complains of left elbow and left shoulder pain, no improvement from last visit. Pain in the left elbow from 0/10 to 4-5/10 and pain in the left shoulder at 3/10. His ortho ordered another MRI, physical therapy and off of work.

Physical Therapy: 10/14, 10/19, 10/21, 10/26, 10/28, 11/2, 11/4, 11/9, 11/11, 11/16, 11/18, 11/23 and 11/25.

G&T Orthopaedics
10/20/21: The MRI has been completed, symptoms unchanged persistent left elbow pain and weakness. Dr. Poepping opines: "I do not see an attachment between the residual tendon with the suture material and the radial tuberosity; there is edema in the area as well; all these findings are consistent with a re-tear of the distal biceps tendon". "He is a candidate for revision of left distal biceps tendon repair".

Dr. Brian McCall – Respondent's IME #2 (RX2)
11/22/21: Opinions: current diagnosis is status post left distal biceps repair with possible nonhealing. The claimant's complaint of weakness to the left elbow could correlate to failure

of the left distal biceps tendon to fully heal. Further evaluation of the biceps with a musculoskeletal ultrasound or a closed high-field MRI should be undertaken to confirm the current status of the biceps as it is quite normal on physical exam. If the left distal biceps tendon was found to be retorn, it would be causally related to the initial injury from 7/22/20 but also influenced by the delayed nature of the repair as well as the claimant's poorly controlled diabetes. If the distal biceps tendon is confirmed to be intact, the claimant would be at maximal medical improvement for the left distal biceps tendon injury.

La Clinica
11/25/21: Petitioner presents with left elbow pain slowly improving at 4/10, left shoulder pain at 2/10. He continues to have difficulties with ADLs. Patient has reached maximum therapeutic benefit and is transitioned to a home exercise program. He is to follow up with his orthopedic surgeon.

G&T Orthopaedics
12/08/21: Petitioner's symptoms remain unchanged. He is pending surgical authorization.

02/02/22: His symptoms are unchanged, pending surgical authorization. A 3T magnet MRI was ordered (per IME).

3T Imaging of Morton Grove
03/16/22: Petitioner presents for the MRI which shows: minimal tendinosis w/o discrete tear.

G&T Orthopaedics
03/23/22: Follow up after MRI completed. The report shows evidence of no full-thickness tear of biceps tendon. He still has pain in both areas, the shoulder and elbow. Dr. Poepping administered an injection of Kenalog and lidocaine. Continued work restrictions.

04/20/22: The injection effect starting to wear off and pain recurring. Petitioner is at MMI and ordered FCE for permanent restrictions. He is to be off work until then.

Dr. Brian McCall – Respondent's IME #3 (RX3)
07/13/22: Opinions: Reviewing the [03/16/22] MRI of the claimant's left elbow, the repair of the left distal biceps tendon is intact and healed. [T]he claimant would be at maximal medical improvement once a closed MRI confirmed the integrity of the left distal biceps repair. This was achieved via the MRI of 3/16/2022 the claimant is at MMI as of that date. With MRI confirmation of healing to the left distal biceps tendon on the 3/16/2022 MRI, the claimant is capable and cleared to perform full duties without restrictions at this time.

06/21/23: Petitioner follows up with pain in both areas (left elbow and left shoulder). He has limited abilities now versus pre-injury. No FCE yet, re-ordered FCE and continued off work status.

ATI Physical Therapy (PX9)
08/23/23: Petitioner completed the FCE. It was valid. He is at the medium physical demand level (20# to 50# occasionally) and he has to constantly lift 50#.

G&T Orthopaedics
09/06/23: Petitioner returns. The FCE was completed, it is valid. Petitioner placed at MMI w/ permanent restrictions per FCE.

CONCLUSIONS OF LAW

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

An injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of employment. *Panagos v. Industrial Commission*, 177 Ill. App.3d 12, 524 N.E. 2d 1018 (1988). The burden is upon the party seeking an award to prove by the preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E. 2d 1026 (1987). The burden of proof is on the claimant to establish the elements of his right to compensation, and unless that 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 Comm*. 44 Ill.2d at 214, 254 N.E.2d 522 (1969). At a hearing, the Arbitrator takes into consideration the credibility of the petitioner and any witnesses. A causal connection between work duties and a condition of ill-being may be established by a chain of events including Petitioner's ability to perform the duties before the date of accident, and the inability to perform the same duties following that date. *Pulliam Masonry v. Industrial Comm'n*., 77 Ill.2d 469, 471 (1979). Proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to an injury. *Land and Lakes Co. v. Indust. Comm'n*., 359 Ill.App.3d, 593 (2d Dist. 2005).

The record is clear that Petitioner was working in a full-duty capacity for Respondent without incident prior to the accidental injury on July 22, 2020. Petitioner testified that prior to that date of accident, he suffered neither symptoms nor required any treatment or diagnostic examinations for his left elbow or left shoulder.

The Arbitrator notes that Petitioner was working full duty up until the date of accident of 07/22/20. After the accident, Petitioner remained symptomatic as has yet to return to his pre-accident baseline. Additionally, the objective medical evidence of the MRI, operative report, physical therapy notes, valid FCE, along with subjective evidence of Petitioner's continued complaints, shows clear evidence of pathology in Petitioner's left elbow. The findings on the

objective evidence of a completed *valid* Functional Capacity Evaluation further support the Petitioner's position on this issue (emphasis added). The Arbitrator finds the opinions of all doctors, Petitioner's treaters, linking Petitioner's condition of ill-being to his traumatic work injury well-reasoned and credible. The Arbitrator finds the opinions of Petitioner's treating doctors, diagnostic exams more reliable and credible than the opinion of Dr. Brian McCall who was retained by Respondent and examined the Petitioner and indicated a full duty release based on the 3T MRI, even though he mentions Petitioner's slow healing due to his diabetes. Respondent did not offer any evidence to disprove or invalidate the valid functional capacity evaluation.

Thus, the Arbitrator finds Petitioner has met his burden of proof in establishing causal connection between his accidental injury and his current condition of ill-being in his left elbow.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J) WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES; THE ARBITRATOR CONCLUDES AS FOLLOWS:

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 Petitioner's treating physicians, Dr. Thomas Poepping, opined that the Petitioner's work accident caused his condition of ill-being with regard to his left elbow. Based on the petitioner's treating doctor's records, his testimony as to the therapeutic benefits of the treatment and having found causal connection, the Arbitrator finds that all treatment rendered to the petitioner was reasonable and necessary.

The Respondent introduced 3 IME reports and a Utilization Review Report to defend against the bills. The IME reports and the UR report are contradictory. First, in Respondent's exhibit #1, the Section 12 examiner opines that physical therapy for the left *shoulder* is no longer medically necessary (emphasis added). That report is dated 11/09/20. As far as the left *elbow* is concerned, the Section 12 examiner does not cut off physical therapy, instead he indicates that a surgery is reasonable, necessary and related to the work injury (emphasis added). He further states

that MMI after surgery would not be achieved until 6 months after the surgical intervention. The assumption is that Petitioner would definitely need physical therapy after surgery. He does not indicate how long therapy would be needed, however Petitioner's orthopedic surgeon, Dr. Poepping recommended therapy for a period of 5 months. In Respondent's exhibit #2, the Section 12 examiner states that "[t]reatment to date includes 79 chiropractic physical therapy sessions which is far greater than would be expected and necessary to recover from left distal biceps tendon injury and repair". However, he does not state how many sessions he would consider to be reasonable and necessary. The Arbitrator notes that the examiner indicated a 6-month MMI after surgery and that Petitioner's surgery was not without a slow healing process due to his diabetes. In Respondent's exhibit #3, the Section 12 examiner is silent regarding prior treatment. Finally, the UR report only addressed therapy to the shoulder and not the elbow. The report indicates that only 10 visits/sessions to the shoulder was necessary. This is contradicted by Respondent's Section 12 examiner's first IME report of 11/09/20. The examiner cut off physical therapy to the left shoulder on 11/09/20. By that time, Petitioner had already received 38 sessions of physical therapy to his shoulder. The Arbitrator lends no credibility to the UR report. Respondent offered no evidence regarding any other medical care except for the physical therapy.

The Arbitrator finds that the care and treatment Petitioner received to his left shoulder and left elbow has been reasonable and necessary. The Arbitrator finds that the physical therapy, injections, prescription medication, imaging and related services were of diagnostic and therapeutic value and objectively confirmed injury to Petitioner's left shoulder and left elbow.

Respondent shall therefore pay the medical expenses outlined in Petitioner's exhibits and Arbitrator's exhibit 1, Fee Schedule Stip Sheet, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and Respondent shall hold Petitioner harmless from claims by any providers of the services for which Respondent is receiving a credit.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (K) WHAT AMOUNT OF TEMPORARY TOTAL DISABILITY BENEFITS IS DUE, THE ARBITRATOR CONCLUDES AS FOLLOWS:

The respondent agrees with Petitioner's claim for temporary total disability benefits from 07/23/20 through 01/17/22 as evidenced by Respondent's payment log (RX4). Respondent

disputes Petitioner's claim for the remaining 106 weeks through 09/05/23. Respondent's basis is their Section 12 examination from 03/16/22 wherein Dr. McCall disagrees with the need for more treatment and states that the Petitioner is at MMI and can return to work in a full duty capacity. Based upon the above findings that Petitioner has met his burden of proof that his current condition of ill-being regarding his left elbow is causally connected to the accident of 07/22/20, Respondent is liable for payment of temporary total disability benefits from 01/18/22 through 09/05/23. The parties stipulate that Petitioner's average weekly wage is $480.00, resulting in a TTD rate of $320.00. Respondent is to pay TTD benefits of 100 weeks at $320.00 per week. Also, Respondent shall pay maintenance benefits for the period of 09/06/23 through 10/31/24 a period of 60 weeks at $320.00 per week.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, this factor is irrelevant, and the Arbitrator gives it no weight.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner is a general laborer with heavy physical demand duties. The Arbitrator therefore gives moderate weight to this factor to the benefit of Petitioner.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 58 years old at the time of the accident. Petitioner has a significant amount of work life left, making his susceptible to re-injury to his lumbar spine. The Arbitrator gives moderate weight to this factor to the benefit of Petitioner.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner has not returned to work with Respondent and has permanent restrictions. The Arbitrator gives great weight to this factor to the benefit of Respondent.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator gives great weight to this factor to the benefit of Petitioner.

Petitioner testified as to his continued difficulties in his activities of daily living along with his inability to find work within his permanent restrictions. Since his release from treatment with permanent restrictions by Dr. Poepping, Petitioner had found 1 light duty job at a paper company. Unfortunately, he only worked a total of 4 days over a 2 week period. He has been conducting a diligent job search without success.

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 35% loss of the Man as Whole pursuant to §8(d)2 of the Act which corresponds to 175 weeks of permanent partial disability benefits at a weekly rate of $288.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018785
Case Name	Floyd David Williams v. Sunrise FS
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0288
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jeffrey Cisco
Respondent Attorney	Bruce Bonds

DATE FILED: 10/8/2026

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FLOYD DAVID WILLIAMS,

Petitioner,

vs. NO: **22WC018785**

SUNRISE FS,

Respondent.

DECISION AND OPINION ON REVIEW

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

On page four of the Decision, in the final paragraph of that page, the final two sentences are inadvertently highlighted. The Commission strikes that highlighting.

On page seven of the Decision, in the fourth paragraph of that page, the citation at the end of the paragraph is corrected to "(PX 3, 6)".

The Commission clarifies the Decision of the Arbitrator to reflect the MMI status of Petitioner's DVT, and modifies the second paragraph of the Order section to read: "Petitioner's current condition of ill-being, low back pain, is causally related to the accident on May 10, 2022. Petitioner's single occurrence of DVT reached MMI on June 21, 2022, and any DVT condition after that date is unrelated to the work accident." Similarly, on page 12, the final sentence of Issue II is modified to read: "Petitioner's current condition of ill-being, low back pain, is causally related to the accident on May 10, 2022. Petitioner's single occurrence of DVT reached MMI on June 21, 2022, and any DVT condition after that date is unrelated to the work accident."

The Commission agrees with the Arbitrator's analysis of the Section 8.1b(b) factors; however, we disagree with the level of disability awarded. As above, Petitioner suffered low back pain and a single occurrence of DVT. Given the same, the Commission decreases the award of 3% loss of use of a person as a whole to 1% loss of use of a person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on March 2, 2026, is corrected and modified as stated herein, and is otherwise 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 8 2026

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

O: 9/15/26
AHS/ps
051

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018785
Case Name	Floyd David Williams v. Sunrise FS
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Magda Derisma, Arbitrator

Petitioner Attorney	Jeffrey Cisco
Respondent Attorney	Jessica Bell

DATE FILED: 3/2/2026

/s/Magda Derisma, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 24 2026 3.53%

STATE OF ILLINOIS)

COUNTY OF **SANGAMON**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Floyd David Williams
Employee/Petitioner

v.

Sunrise FS
Employer/Respondent

Case # **22** WC **018785**

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 **Magda Derisma-Oyewole**, Arbitrator of the Commission, in the city of **Springfield**, on **December 22, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 10, 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 $**33,145.42**; the average weekly wage was $**720.55**.

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

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

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

Respondent shall be given a credit of $**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

Petitioner suffered an accident on May 10, 2022, which arose out of and in the course of his employment by Respondent.

Petitioner's current condition of ill-being, low back pain, is causally related to the accident on May 10, 2022.

The bills introduced into evidence as Petitioner's Exhibit 2 and bills dated May 26, 2022, May 27, 2022, June 3, 2022, and June 17, 2022, in Petitioner's Exhibit 4 are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident. Respondent shall pay all medical bills referenced in the exhibits directly to the providers pursuant to §8(a) and §8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $480.37/ weeks, as a result of the accident from May 27, 2022, through June 3, 2022.

Petitioner sustained permanent partial disability to the extent of 3% loss of use of person as a whole as provided in Section 8(d)2 of the Act, as a result of the accident.

Respondent shall pay Petitioner compensation that has accrued from 05/10/22 through 12/22/25, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Magda Rewinska-Oyewole

Signature of Arbitrator

MARCH 2 2026

ICArbDec p. 2

Floyd David Williams vs. Sunrise FS 22WC01875

FINDINGS OF FACT

This claim came before Arbitrator Magda Derisma-Oyewole for trial in Springfield on December 22, 2025. On July 19, 2022, Petitioner filed an Application for Adjustment of Claim alleging an injury to his lower back, legs, shoulders, and neck (AX2). At trial, both parties agreed that the issues in disputes are accident, causal connection, temporary total disability, medical bills, and nature and extent.

TESTIMONY AT ARBITRATION

I. Petitioner

Petitioner testified he worked for Respondent as an Applicator. In this role he drives and maintains machines with 120-foot booms that spray herbicide and insecticide chemicals. On May 10, 2022, he worked for Respondent for less than a year. Petitioner testified on May 10, 2022, his supervisor, Joe Wohler, brought him 600 to 700 gallons of chemical to transfer into his machine. He transferred the chemical to the machine using a 3-inch, 20-foot-long hose. Petitioner testified to transfer the liquid, you shut the pump off, then shut the valve, and bleed the hose out with air. He testified the hose was heavy, so he had it under his armpit. After he bled the hose out with air, he had to turn the air off. He then popped the valve to let the air pressure off. When he did that, it released and spun him around and slammed him to the ground. He tried to bleed the air out slowly so there would not be a sudden gush of air (T. 16 – 19).

Petitioner testified that there are usually 2 people doing this task, but his supervisor, Mr. Wohler, was on the phone with someone trying to figure out how to turn on the irrigation system. He testified that the company procedure requires 2 people to complete this task for safety. If there is just one person, it is more likely for the air to blow and cause an accident. Petitioner testified the task requires you to run 20 to 25 feet back and forth between the tender, shutting the machine off, turning the air, bleeding the hose, shutting the valve, and then going back and shutting off the air (T. 21 - 22).

Petitioner testified after the sudden gush of air he was thrust backwards and fell on his left side. As he was getting off the ground, his supervisor came over and asked him if he was okay. He told him he was okay and continued to work the rest of the day. He testified the next morning he noticed pain in his lower back, neck, and shoulder area. He called his supervisor and told him he could not move and took 2 vacation days. On the third day, May 13, 2024, he went to the emergency room (T. 23 – 27).

Petitioner testified he went to the emergency room for lower back pain. He did not feel much pain in his neck and shoulder area. At the emergency room he was diagnosed with a severe myofascial tear. He did not feel much pain in his neck and shoulder area. On May 26, 2022, he returned to the doctor and was diagnosed with deep vein thrombosis (DVT) in his left leg. He had blood clots in his leg after being on bed rest for his back injury. Petitioner testified before this incident he was never diagnosed with DVT. Before the incident he was not treated for back pain and did not have any work restrictions. He had no physical difficulties that impeded his ability to work at the time of his work accident (T. 27 – 30).

Petitioner testified that his neck and shoulder pain resolved. His back only gives him problems if he overexerts it. He has left leg pain every day. His left leg swells and feels like it is on fire. He was prescribed Xarelto for his DVT and still takes it today. He testified that there was a period when he was not taking Xarelto due to lack of ability to pay for it (T. 33 - 37).

Petitioner testified that after the incident he did not work again until he obtained employment with a new company on August 15, 2022. He was released to return to work on June 21, 2022. Petitioner testified Respondent did not pay him for any time he was off work after the accident. Petitioner testified that he worked for 2 other employers after his employment ended with Respondent, but his employment was terminated with his subsequent employers due to absences related to his leg problems. Petitioner testified that he is still unable to work due to leg issues caused by the work incident (T. 34 - 41).

On cross examination, Petitioner testified his supervisor tendered him twice that day. Petitioner testified that it takes 15 minutes to pump the chemicals. It took him 15 seconds to stand off the ground. He does not know if the supervisor ran or walked over to him, but he asked him if he was okay. Petitioner testified he did not tell the supervisor that he fell because he was there (T. 42 – 46). He does not recall if he called or texted the supervisor to tell him he would be out (T. 49). Petitioner testified he disagreed with the accident report that notes he was slammed to the wagon and then slammed to the ground. He was slammed to the ground (T. 64). He testified he was told he was fired because he did not provide doctor's notes to substantiate his absence. He went to work for Airgas on August 15, 2022, driving semi-trucks. Petitioner testified in January 2023 he sought additional treatment for a new blood clot in his left leg. He testified the blood clot was due to the truck driving activities, a reoccurrence from the initial DVT (T. 72 – 73).

II. Joe Wohler

Joe Wohler testified he is the Facility Manager for Respondent and at all relevant times, he was Petitioner's supervisor. He worked in the agricultural industry for 30 years in various roles, including 12 years as an Applicator (T. 84 - 86).

Mr. Wohler testified he was present during the May 10, 2022, incident involving Petitioner. In Mr. Wohler's 30 years of experience, he has never experienced the scenario described by Petitioner where a hose blew backwards and threw a person to the ground. Mr. Woehler testified on the day of the incident he was tending for Petitioner and was at the front of the tank, roughly 15 feet away from Petitioner at the pump and motor. When the tank was emptied, he blew the line clean, and heard Petitioner say okay, so he shut the air line off, and walked to the rear of the tank which took 7 seconds. He saw Petitioner standing there holding the hose (T. 86 - 87).

Mr. Wohler testified he was standing 15 to 20 feet away from Respondent, at the air line in front of the liquid tank, and Petitioner was standing at the back near the green sprayer (T. 92). He testified okay was an indication to shut the valve off. Mr. Wohler testified that after he shut the valve off, he did not hear anything as he was walking back. He saw Petitioner standing there holding the hose. Mr. Woehler testified he saw liquid dripping off the sprayer and asked Petitioner what happened. Petitioner said it popped off valve and startled

him. Mr. Woehler testified he asked Petitioner if he was okay and Petitioner said yes. Mr. Woehler testified Petitioner did not seem unnatural. He testified he noticed there was some liquid on the sprayer machine. Petitioner did not mention being slammed to the ground or slammed the trailer, sprayer, or ground (T. 92 – 96).

On cross-examination, Mr. Wohler testified safety procedures required bleeding the air out of the hose to be sure that liquid would not spray out, not because it could cause a powerful gust of air. He testified he saw liquid on the machine (T. 121 – 122). Mr. Wohler testified he asked Petitioner if he was okay because Petitioner was standing there holding the hose and he saw the liquid dripping off the machine. He asked Petitioner what happened, and Petitioner said it popped off the valve. When he asked Petitioner if he was okay, Petitioner said it startled him (T. 126).

MEDICAL EVIDENCE

I. Pre-Accident

On January 6, 2017, Petitioner presented to Crystal Falke, PA-C, for high blood pressure and bilateral lower extremity edema. He was noted to be obese at 281 lbs. with a BMI of 40.32. Petitioner was advised that he would likely need medication therapy, including lisinopril/HCTZ to help with his lower extremity edema and blood pressure (RX8, 2 - 3).

On January 13, 2017, Petitioner returned to PA Falke for elevated blood pressure and obesity. His past medical history noted dependent edema, hypertension, and obesity. He was assessed with hypertension, class II obesity, and dependent edema. PA Falke prescribed lisinopril plus HCTZ due to Petitioner's added condition of intermittent lower extremity dependent edema. (RX8, 4 - 6).

On February 14, 2017, Petitioner returned to PA Falke for a follow-up on his hypertension. It was noted to be well controlled on the current medication therapy (RX 8, 7 - 9).

On September 18, 2017, Petitioner returned to PA Falke. His dependent edema was noted to be fairly controlled with diuretic therapy, but Petitioner admitted to continued intermittent edema depending how much he is on his feet. He declined compression stockings. PA Falke increased his HCTZ dose to improve his dependent edema. (RX 8,10 - 12).

On May 20, 2020, Petitioner returned to PA Falke for a right ulnar collateral ligament sprain/ tendonitis. He was 276 lbs. with a BMI of 37.43. The assessment also noted uncontrolled hypertension and medication noncompliance. PA Falke's notes indicate that Petitioner's blood pressure was elevated and uncontrolled. Petitioner reported not taking his blood pressure medications in 2 years. Petitioner was advised to restart his medications and counseled on the importance of compliance. (RX 8, 13 - 15).

II. Post-Accident

On May 13, 2022, Petitioner presented to the Mason District Hospital Emergency Department for muscle aches in the right lower back that started approximately 4 days prior. Petitioner reported that a pressure hose disconnected and knocked him down. He reported working the rest of the day but being very sore and stiff

the next day with his discomfort improving over the past couple of days. He was assessed with an acute myofascial strain and discharged with Diclofenac and Flexeril. (PX1, 2 - 4)

On May 26, 2022, Petitioner saw Crystal Falke, PA-C. He reported that he was undoing a hose on May 10, 2022, when the hose backfired and knocked him to the ground. Petitioner reported he was not improving since being seen at the ED, noting a knot on the right side of his back and generalized stiffness/soreness in his left neck and lower back. Petitioner reported that he had been lying in bed all day due to his discomfort. Petitioner also reported that four days prior he started to have increasing pain down the entire left side of his leg with swelling. Petitioner was noted to be a current smoker and not taking his previously prescribed Lisinopril and HCTZ. Petitioner's weight was 284 lbs. with a BMI of 38.51. His exam revealed marked swelling of the left lower extremity with brown/red areas of discoloration from mid-calf down into toes. PA Crystal Falke assessed Petitioner with a lumbar strain and left leg pain and swelling. She was concerned for DVT, especially with Petitioner's reported history of staying in bed for 10+ hours/day. She also noted his past medical history of lower extremity dependent edema and his noncompliance with prescribed diuretic therapy. A doppler ultrasound of his left lower extremity was ordered. She noted that she needed additional imaging before she could provide a plan of care, including expected time off work, if indicated. (RX 1, 2 - 4).

On May 26, 2022, a lower venous doppler ultrasound was performed and showed extensive occlusive left leg deep venous thrombosis (PX 1, 9 - 10).

On May 27, 2022, Petitioner returned to PA Crystal Falke. She noted that Petitioner's back x-ray showed no fracture, and minimal spondylosis. Regarding his back injury, he completed a course of diclofenac and Flexeril. Currently no, further treatment is needed. If he continues with recurrent pain, she will send him to physical therapy. Petitioner is 17 days post injury and therefore does not need to be off work for his low back.

Regarding the DVT, the doppler ultrasound showed extensive DVT from the femoral to the tibial. She noted, unfortunately patient chose to stay in bed for 10+ hours. She assessed Petitioner had deep vein thrombosis provoked following injury and extended bed rest. She notes Petitioner reported he does have a previous history of DVT in 2008 or 2009 that was unprovoked. He is unable to work. She will start him on Xarelto. Patient is to return to clinic in 1 week. At this time, she will determine if he needs to continue being of work or if he can return (PX1, 5 – 7).

On June 2, 2022, a lower venous doppler ultrasound revealed interval improvement from the 5/26/22 study with residual DVT throughout the left superficial femoral and popliteal vein. (PX 1, pp. 13-14).

On June 3, 2022, Petitioner returned to PA Crystal Falke. She noted Petitioner continues to report pain and swelling. His leg condition has improved since last visit. He advises him to return to his activities to improve circulation. Bed rest is not advised. She advises Petitioner return to work on Monday with restrictions for 2 weeks. Following this he will be able to return to work full duty. His blood pressure continued to be borderline, and Petitioner declined restarting medications (PX1, 8 - 10).

On June 17, 2022, Petitioner returned to PA Falke. Petitioner reported that his leg condition improved with minimal pain but continued swelling. Petitioner was advised that he still needed to see hematology. He was allowed to return to work full duty without restrictions starting on June 21, 2022 (PX 1, 12 - 13).

On January 10, 2023, Petitioner saw Jenna Snider, APN. He reported left leg swelling that comes and goes but recently worsened after driving his semi for a 15-hour shift. He also reported discoloration and tenderness to his left upper thigh. Petitioner reported being on Xarelto but that he stopped taking it due to running out of the medication and not following up. He reported being off the medication for 4 months. Petitioner was assessed with left leg swelling, leg erythema, history of DVT, hypertension, obesity, and dependent edema. A doppler ultrasound was ordered and a new referral to hematology made. Petitioner was also restarted on his hypertension medications of Lisinopril and HCTZ (RX1, 14 - 16).

On January 11, 2023, Petitioner had a doppler ultrasound which showed interval improvement compared with June 17, 2022, and (1) nonocclusive thrombus now seen within the left superficial femoral vein, left popliteal vein, and left posterior tibial vein and (2) nonocclusive superficial thrombus within the mid left greater saphenous vein. (RX1, 17 - 19).

On January 24, 2023, Petitioner saw APN Jenna Snider reporting some improvement in his pain and swelling. He was restarted on Xarelto. It is noted that he had an upcoming hematology appointment in February, and she was waiting for recommendations on whether Petitioner needed to be on Xarelto short or long term. (RX1, 20 - 22).

On April 25, 2023, Petitioner saw Dr. Miller and reported he missed the hematology appointment. Petitioner was questioning his relatively sedentary job as a truck driver and whether that provokes his symptoms/condition. (RX1, 23 - 25).

On May 16, 2023, and July 3, 2023, Petitioner saw various providers for continued evaluation for his various health conditions, including his left lower extremity. (RX1, 26 - 46).

On July 3, 2023, Petitioner was referred to vascular surgery due to partial occlusion of draining veins. (RX1, 45).

On July 25, 2023, Petitioner saw Celine Walker, APRN, with vascular surgery. He reported having significant leg edema prior to DVT. DVT runs in his family, his father and siblings have it as well. Edema has been ongoing most of his life. She noted Petitioner last DVT was unprovoked in January 2023. He is an obese truck driver who sits for 8 hours a day in his truck. The exam noted bilateral changes in lower extremities including edema, scattered reticular veins, and chronic venous skin changes. She assessed Petitioner to have left lower extremity swelling, lymphedema, and varicose veins of both lower extremities. She recommended compression socks and a referral to the lymphedema clinic. Petitioner deferred the referral due to having a new job (RX2, 2 - 3).

On September 8, 2023, Petitioner followed up with APRN Celine Walker. He had not yet obtained compression socks, and he reported having lost his job. He reported improvement in his lower extremity edema

since being off work. A bilateral reflux scan completed on August 29, 2023, was reviewed and revealed acute thrombus in the left greater saphenous vein and superficial venous reflux in the right lesser saphenous vein at the proximal and mid-calf. APRN Walker noted Petitioner had bilateral lower extremity chronic venous insufficiency and secondary lymphedema. APRN Walker offered advice and referrals for obtaining compression socks, attending the lymphedema clinic for decongestive therapy, and weight loss. (RX 2, 4 - 5).

On September 30, 2024, Petitioner presented to the Emergency Department at Mason District Hospital reporting increasing pain in the medial left thigh that feels like his previous DVT. He reported back pain a week prior that caused him to be more immobile with the lower extremity pain and swelling starting 3 days prior. He had not been taking his Xarelto as recommended. His exam showed bilateral non-pitting edema of the lower extremities, stasis dermatitis of the bilateral lower extremities, and mild left-sided calf tenderness. Mr. Williams was assessed with acute and deep chronic venous thrombosis of the left femoral vein and discharged with Xarelto and HCTZ (RX4, 1 - 2).

On October 7, 2024, Petitioner saw APN Jenna Ishmael. Petitioner reported running out of his medication in November of 2023 due to losing insurance. Petitioner reported being compliant with his Xarelto and great improvement in his left leg swelling. APN Ishmael changed the dose of the Xarelto medication (RX1, 47 - 50).

On November 27, 2024, Petitioner saw Kali Troxell, APN, to discuss weight loss and hypertension (RX1, 51 - 53). On December 27, 2024, Petitioner followed up with Kali Troxell, APN requested a refill of his Xarelto. She assessed Petitioner to have DVT of lower extremities (RX1, 54 - 56). On February 5, 2025, Petitioner had a follow up visit with Kali Troxell, APN for obesity and hypertension. (RX1, 57 - 59).

On March 5, 2025, Petitioner had a follow up visit with Kali Troxell, APN for obesity, hypertension DVT, and other personal health conditions. Petitioner reported he was out of his Xarelto and could not afford to get it filled until Friday. APN Troxell provided him with medication samples and counseled him on the importance of prioritizing this medication (RX1, 61 - 63).

DEPOSITION TESTIMONY OF KALI TROXELL, NP

On December 15, 2025, Nurse Practitioner Kali Troxell was deposed by request of Petitioner (RX5, 4). NP Troxell testified that she first saw Petitioner on November 27, 2024, to discuss weight loss. Petitioner did not mention or provide any information about a work accident, neck pain, back pain, or deep vein thrombosis. NP Troxell testified she had limited knowledge regarding Petitioner's DVT and only learned of it when she saw Petitioner for a follow-up visit on December 27, 2024, when he requested a refill for Xarelto. She had no information or knowledge about any alleged work accident or injury (RX5, 7).

NP Troxell testified generally about deep vein thrombosis explaining that it is a blood clot in a deep vein and can potentially be caused by conditions such as birth control, prolonged sitting or standing, injury, recent surgery, smoking, obesity, or poor health in general (RX5, 10-11).

On cross-examination, NP Troxell testified she was not offering any causation opinions regarding any medical conditions, medications, or work restrictions that might be related to Mr. Williams' alleged May 10,

2022, work accident. (RX5, 16 - 17). She testified that DVT can be resolved and be provoked by subsequent, independent events (RX5, 18 - 19).

On re-direct examination, NP Troxell testified although a prior DVT might put someone at a higher risk for a recurrent DVT, there's a lot of components to it (RX5, 20).

OTHER EVIDENCE

Respondent Exhibit 6 – Medcor Report, dated May 20, 2022, Petitioner reported that 10 days ago he was filling up a machine and the 3-inch hose which still had air pressure inside slammed him into the wagon and then slammed him on the ground, hurting his lower back.

Respondent Exhibit 10 – Text Messages between Petitioner and Joe Wohler. On May 11, 2022, at 6:26 am, Mr. Wohler received a text message from Petitioner: "Joe, I'm sorry my whole body hurts my and constipated my headache and leg swelling I don't know if I can do machine." On May 12, 2022, at 6:07 am, Mr. Wohler received a text message from Petitioner: "Joe I'm having a lot of pain in my lower back, and I still haven't been able to go to bathroom sorry." On May 13, 2022, at 2:41 pm, Mr. Wohler received an additional text message from Petitioner that stated he had gone to the ER for a severe lower back strain causing stiffness in his shoulders, neck, and right hip.

ARBITRATOR CREDIBILITY ASSESSMENT

Although Petitioner and Joe Wohler were present for the incident on May 10, 20022, they provided very different testimonies describing the incident. Nonetheless, the Arbitrator finds Petitioner and Mr. Woehler to be credible witnesses. They both testified to how they remembered the events on May 10, 2022.

Mr. Wohler may not have been paying attention to Petitioner during the incident either because he was taking a work call or tendering the machine at the opposite end. Petitioner may have been slammed to the ground and or the wagon. There are also minor inconsistencies with Petitioner's testimonies on whether he hit the wagon or floor, or if he ever experienced DVT prior to the work incident. Nonetheless provided a consistent report of the accident throughout.

CONCLUSIONS OF LAW

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

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on May 10, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence, other evidence, and deposition testimony, above, are incorporated herein.

The words "accident" and "accidental injury," … are meant to include every injury suffered in the course of employment for which there was an existing right of action at the time the act was passed... If an injury can be traceable to a definite time, place and cause and the injury occurs in the course of the employment, the injury is accidental within the meaning of the Act and the obligation to provide and pay compensation arises. *E. Baggot Co. v. Indus. Com.,* 290 Ill. 530, 531, 125 N.E. 254, 254 (1919).

In this case, despite differing accounts by Petitioner and supervisor Joe Wohler of the events on May 10, 2022, both witnesses provided testimony that something unusual happened while transferring chemicals from the machine. Both witnesses testified to Respondent's safety protocol for transferring chemicals. It is reasonable to infer that Respondent has a safety protocol in place presumably to prevent accidents during the chemical transfer process. Mr. Wohler testified he noticed he saw liquid dripping off the sprayer prompting his to ask Petitioner what happened, and if he was okay. Petitioner testified he thought Mr. Wohler saw him fall, which prompted him to ask if he was okay. Petitioner then complained of lower back pain the next day and filed a timely accident report providing a fairly consistent history of the accident. Petitioner also provides a consistent history of the accident at the emergency room, to PA Crystal Falke, and at trial. The low back injury can be traced to the workplace tendering incident on May 10, 2022.

The Arbitrator finds that Petitioner suffered an accident on May 10, 2022, which arose out of and in the course of his employment by Respondent.

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

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, lower back pain, is causally related to the accident of May 10, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence, other evidence, and deposition testimony, above, are incorporated herein.
The findings in regard to accident, above, are incorporated herein.

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. *Certi-Serve, Inc. v. Industrial Com*., 461 N.E.2d 954 (1984).

In this case, Petitioner was in good health regarding his lower back and working full duty before the accident on May 10, 2022. On May 13, 2022, he visits the emergency room, provides a consistent history of the accident and is diagnosed with a myofascial strain. On May 26, 2026, Petitioner follows up with PA Crystal Falke and she assessed Petitioner to have a lumbar strain and was concerned about possible DVT. On May 27, 2027, PA Crystal Falke assessed Petitioner to have DVT provoked following injury and extended bed rest. She started Petitioner on Xarelto to treat the DVT. By June 17, 2022, the DVT resolved, and Petitioner was allowed to return to work full duty without restrictions starting June 21, 2022. Although it is unclear why Petitioner

deposed NP Kali Troxell, since she mainly treated Petitioner for weight loss in 2024 and had limited knowledge of the accident, she testifies DVT has many causes including an injury. The chain-of -events support the finding of causal connection, lumbar strain and a single occurrence of DVT, are causally related to the accident on May 10, 2022.

Petitioner has recurring DVT which is not connected to the accident on May 10, 2022. NP Kali Troxell, testified that DVTs can resolve and be provoked by subsequent, independent events. DVT is caused by conditions such as birth control, prolonged sitting or standing, injury, recent surgery, smoking, obesity, or poor health in general. In this case, after Petitioner receives a full duty release on June 17, 2022, he visits a medical provider for treatment for DVT approximately 6 months after. He reports being off his DVT medication, Xarelto, for 4 months and driving semi for a 15-hour shift. The Arbitrator Petitioner has many risk factors for re-occurring DVT such as family history, prolonged sitting or standing, obesity, smoking, and poor health.

The Arbitrator Petitioner's current condition of ill-being, low back pain, is causally related to the accident on May 10, 2022.

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

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the accident on May 10, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence, above, are incorporated herein.
The findings in regard to accident, causal connection, are incorporated herein.

All of hospital bills marked as Petitioner's Exhibit 2 Mason District Hospital Statements were reasonable and necessary as a result of the accident on May 10, 2022.

Some of the medical bills marked as Petitioner's Exhibit 4 Mason City Medical Associate Statements were reasonable and necessary as a result of the accident on May 10, 2022. The only bills related to the accident are from the following date of service:

- May 26, 2022 (pg 50)
- May 27, 2022 (pg 51)
- June 3, 2022 (Pg 52)
- June 17, 2022 (pg 53)

The remaining bills are not related to the accident.

The Arbitrator finds that the bills introduced into evidence as Petitioner's Exhibit 2 and bills dated May 26, 2022, May 27, 2022, June 3, 2022, and June 17, 2022, in Petitioner's Exhibit 4 are reasonable and

were necessitated to treat or cure Petitioner's injuries suffered in this accident. Respondent shall pay all medical bills referenced in the exhibits directly to the providers pursuant to §8(a) and §8.2 of the Act.

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

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident on May 10, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence, other evidence, and deposition testimony, above, are incorporated herein.
The findings in regard to accident, medical, causal connection, above, are incorporated herein.

In order to prove his 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, ¶ 49. 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). When determining whether an employee is entitled to temporary total disability benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n,* 923 N.E.2d 266, 268 (2010).

In this case, Petitioner was taken off work on May 27, 2022, by PA Crystal Falke. He was allowed to return to work with restrictions on June 3, 2022. Petitioner did not return to work after the accident. He testified he was told he was fired because he did not provide doctor's note to substantiate his absence. Petitioner did not establish he was unable to work after June 3, 2022. He also did not testify that he provided Respondent with the light duty return to work note or that Respondent could not accommodate his work restrictions. Therefore, the Arbitrator finds Petitioner was temporary total disabled on May 27, 2022, the first date he was taken off work, until June 3, 2022, the date he was allowed to return to work with restrictions.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from May 27, 2022, through June 3, 2022.

V. Issue: What is the nature and extent of the injury?

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence, above, are incorporated herein.
The findings in regard to temporary total disability above, are incorporated herein.

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**: With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes the record reveals at the time of the accident Petitioner worked for Respondent as an Applicator. In this role he drives and maintains machines. Although Petitioner was terminated, he was released to return to work full duty as an Applicator. The Arbitrator gives some weight to this factor in determining PPD.

(iii) **Age**: With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident. Because Petitioner is near retirement age, the Arbitrator gives some weight to this factor in determining PPD.

(iv) **Earning Capacity**: With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there is no evidence of reduced earning capacity contained in the record. The Arbitrator places no weight on this factor.

(v) **Disability**: With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that because of the work accident on May 10, 2022, Petitioner was diagnosed with a lumbar strain, and it provoked an occurrence of deep vein thrombosis which resolved. Petitioner testified at trial his back only gives him problems if he overexerts it. The Arbitrator gives great weight to this factor in determining PPD.

Based on the consideration of the above five factors, and the record taken as a whole, the Arbitrator finds that sustained Petitioner sustained permanent partial disability to the extent of 3% loss of use of person as a whole as provided in Section 8(d)2 of the Act, as a result of the accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015416
Case Name	Brenda Beck (Guardian of WLK - Minor and sole heir of Grace Keeton, Deceased) v. Subway
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0289
Number of Pages of Decision	7
Decision Issued By	Frank Soto, Commissioner, Raychel Wesley, Commissioner

Petitioner Attorney	J. Kevin Wolfe
Respondent Attorney	Timothy Furman

DATE FILED: 10/13/2026

/s/ Raychel Wesley, Commissioner

Signature

DISSENT

/s/ Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☒ (REMAND FROM APPELLATE COURT)	☒ Rate Adjustment Fund (§8(g))
COUNTY OF) CHAMPAIGN	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRENDA BECK,
GUARDIAN OF WLK, A MINOR,
AND SOLE HEIR OF GRACE
KEETON, DECEASED,

Petitioner,

vs. NO: 22 WC 15416

SUBWAY,

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 April 13, 2026, the Commission issues an opinion on remand as follows.

I. PROCEDURAL BACKGROUND

Petitioner's claim was the subject of arbitration hearings held on August 24, 2023. In a Decision filed September 21, 2023, the Arbitrator found that Petitioner, who is the mother of the decedent, had proved that the decedent had suffered a fatal injury arising out of and in the course of her employment with Respondent on the date in question. As such, Petitioner was awarded death benefits, commencing May 31, 2022, of $600.00 per week, as guardian of the person and estate of WLK, a minor and sole heir of the decedent. Benefits were to be paid to the Guardian until and unless those benefits were extinguished for any reason(s) codified in the Act. Respondent was ordered to pay burial expenses of $8,000.00 to Petitioner Brenda Beck, as provided in §7(f) of the Act, and Respondent was entitled to a credit for any burial expenses previously paid. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost of living adjustments, paid by the Rate Adjustment Fund, as provided in §8(g) of the Act.

Respondent sought a review by the Commission, which issued a Decision and Opinion on Review on May 7, 2024, wherein the Commission affirmed and adopted the Arbitrator's award.

Respondent then sought judicial review of the Commission's Decision before the Circuit Court of Cook County. The circuit court confirmed the Commission's Decision. Respondent then appealed.

On April 13, 2026, the Illinois Appellate Court filed an opinion reversing the judgment of the circuit court, setting aside the Commission's Decision, and remanding this matter to the Commission with directions that the Commission properly analyze whether the decedent, as a traveling employee, was injured while engaging in conduct that was reasonable and foreseeable to the employer. See *Kertis v. Illinois Workers' Compensation Commission*, 2013 IL App (2d) 120252WC, ¶ 17.

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 September 21, 2023, to the extent they do not conflict with the Illinois Appellate Court opinion filed on April 13, 2026. The Commission also incorporates by reference the April 13, 2026 Illinois Appellate Court opinion, which delineates the relevant facts of the case and the court's analysis leading to a remand to the Commission as stated above.

III. CONCLUSIONS OF LAW

In the instant case, it is stipulated that the decedent was a traveling employee who, at the time of accident, was traveling from a Subway store in Gillespie, IL to her employer's Subway store in Litchfield, IL. She was delivering restaurant supplies at the request of her supervisor. The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Subway v. Illinois Workers' Compensation Commission*, 2026 IL App (5th) 250429WC, ¶ 11; *Hoffman v. Industrial Commission*, 109 Ill.2d 194, 199 (1985). An injury sustained by a traveling employee arises out of her employment if she was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that "might normally be anticipated or foreseen by the employer." (Internal quotation marks omitted.) *Pryor v. Illinois Workers' Compensation Commission*, 2015 IL App (2d) 130874WC, ¶ 20. Whether an employee was injured while engaging in conduct that was reasonable and foreseeable to the employer is a question of fact to be resolved by the Commission. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 17.

Taking all facts into account, we find that the decedent's motor vehicle accident, incurred while Petitioner was a stipulated traveling employee, was reasonable and foreseeable so as to conclude that the accident arose out of her employment with Respondent. Specifically, the majority notes that decedent's activity of driving to deliver supplies to a store was in furtherance of Respondent's business. Respondent not only knew that the decedent would be traveling from one Subway store to another, but the record reflects that the decedent's supervisor specifically instructed the decedent to do so. Furthermore, it is entirely reasonable and foreseeable that the decedent may be involved in a motor vehicle accident while delivering supplies to a store. There is no indication in the record that the decedent took any detours while traveling. Accordingly, the majority finds that her actions arose out of and in the course of her employment.

Based on the above, the Commission finds that the decedent's actions as a traveling employee at the time of accident were reasonable and foreseeable. Thus, the preponderance of

evidence supports a finding that the decedents' work accident arose out of and in the course of her employment with Respondent.

Having analyzed the issue of accident pursuant to the Appellate Court Order on Remand, the Commission now affirms and adopts the Decision of the Arbitrator in all other aspects.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 21, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses listed in Petitioner's Exhibit 4, as provided in §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay death benefits, commencing May 31, 2022 of $600.00/week on behalf of the minor child of the decedent, Willow Leanne Keeton, born January 29, 2021, to Brenda Beck, legal guardian of Willow Leanne Keeton because the injuries caused the employee's death, as provided in §7 of the Act. Respondent shall pay death benefits until Willow's 18th birthday or until her 25th birthday if she is enrolled as a full time student in an accredited educational institution.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay $8,000.00 for burial expenses to the decedent's surviving child or the person(s) incurring the burial expenses, as provided in §7(f) of the Act. Respondent shall receive credit for any burial expenses previously paid.

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 §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 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.

OCTOBER 13 2026

/s/ *Raychel A. Wesley*

RAW/wde

D: 8/19/26 /s/ *Carolyn M. Doherty*

43

DISSENT

I respectfully dissent from the majority's decision and would find that the decedent failed to prove that her accident arose out of and in the course of her employment. Specifically, I would find that the manner in which the decedent performed the activity was reckless and unreasonable. At the time of the motor vehicle accident, the decedent was operating a motor vehicle after consuming two separate and distinct forms of THC, watching videos on her phone, driving at a speed too fast to avoid a collision, speeding and not wearing a seatbelt.

A traveling employee is an employee whose job duties require him or her to travel away from the employer's premises. *Allenbaugh vs. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150284WC, Pg. 15. The determination whether an injury to a traveling employee "arises out of" and "in the course of employment" is governed by different rules than the rules applicable to other employees. *Subway vs. Illinois Workers' Compensation Comm'n*, 2026 IL App (5th) 250429WC, Pg.11. If an employee is a traveling employee, then the employee is generally considered to be "in the course of" the employment if the traveling employee is injured while traveling for work.

A traveling employee is typically in the course of employment from the time that he leaves home until he returns; however, the injury must occur while the employee is traveling for work, and the work related travel at issue must be more than a regular commute from the employee's home to the employer's premises. *Allenbaugh vs. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150284WC, Pg. 15. See also *Pryor vs. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130874WC, Pgs. 21-22. "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs *reasonable activities* in conjunction with his employment. *Wise v. Industrial Comm'n*, 54 Ill. 2d. 138, 295 N.E.2d 459 (1973). (Emphasis added). An accident arises out of one's employment if its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Corp. vs. Industrial Comm'n.*, 129 Ill. 2d. 52, 541 N.E.2d 665 (1989). "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer,

acts which he had a common law or statutory duty to perform or acts *which the employee might reasonably be expected to perform incident to his assigned duties*. *Id.* at 667. (Emphasis added).

However, a traveling employee injured in the course of employment is not exempt from the requirement that he also prove his accident "arose out of" the employment. *Jensen vs. Industrial Comm'n*, 305 Ill. App. 3d 274, 711 N.E.2d 1129 (1999). The test for determining whether a traveling employee's accident arose out of the employment is whether the injury occurred while engaged in conduct that was reasonable and foreseeable to the employer. *Robinson vs. Industrial Comm'n*, 96 Ill. 2d 87, 92, 449 N.E.2d 106 (1983). See also, *Kertis vs. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, P16 ("An injury sustained by a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, *i.e*., conduct that 'might normally be anticipated or foreseen by the employer.'"). In determining whether an employee's conduct while traveling was reasonable and foreseeable, the conduct at issue may be subdivided into two components; the nature of the activity engaged in by the employee and the manner in which the employee performed the activity. See *Jensen vs. Industrial Comm'n*, 305 Ill. App. 3d 274, 711 N.E.2d 1129 (1999).

As demonstrated by *Jensen v. Industrial Commission*, 305 Ill.App.3d 274 (1st Dist. 1999), even where an activity in which a travelling employee is engaged at the time of injury is itself reasonable and foreseeable, the manner in which the employee engages in that activity can render their conduct unreasonable and unforeseeable. In *Jenson*, the employee, who was a professional pilot, was a guest at his employer's summer retreat until the scheduled return flight. The claimant was permitted to use the employer's recreational vehicles (ATV) and the claimant sustained serious injuries while driving an ATV. The claimant's status as a traveling employee was undisputed, and there was no disagreement that traveling employees may be compensated for injuries during recreational activities as long as those activities were reasonable and foreseeable. The Commission found the recreational activity was reasonable and foreseeable since the pilots were permitted to use the ATVs; however, in a second analytical step, the Commission found that "the *manner* in which the claimant drove the ATV was reckless and thus unreasonable" and denied benefits. (Emphasis added.) *Id*. at 279. On appeal, the Appellate Court noted that, "[w]hile we have been unable to locate any Illinois cases that directly address whether the Commission may find that the manner in which an activity is conducted is unreasonable or unforeseeable even though the activity itself is reasonable and foreseeable, we believe that such an analysis is appropriate." *Id*. In finding the claimant's conduct was reckless and unreasonable, the Commission noted the claimant drove on a county road beyond the employer's property. The Commission also noted the claimant did not wear a helmet even though helmets were available for use. There was agreement that the county road was a sand and gravel roadway, which created a dusty condition while driving. The other pilot estimated that claimant was driving between 30 and 50 miles per hour and proffered his lay opinion that the claimant drove too fast for conditions. The Court concluded that the Commission's determination that the claimant's injuries did not arise out of his employment was not against the manifest weight of the evidence. *Id*. at 280.

In the instant case, the manner in which the decedent performed the activities was neither reasonable nor foreseeable. The record contains credible evidence that at the time of the accident, decedent was: 1) under the influence of two separate types of active THC; 2) distracted by cell phone video; 3) speeding; 4) operating her vehicle too fast to avoid a collision; and 5) not wearing a seat belt. As such, the manner in which the decedent performed the activity was not in furtherance of Respondent's business and was unrelated to fulfilling her work duties. It is important to note that this collision took place in broad daylight without any evidence of adverse road or weather conditions or that the decedent's vehicle experienced any mechanical issues. The lack of any evidence that decedent attempted to apply the brakes or take evasive maneuvers before impacting the rear of the vehicle stopped at the intersection further supports the reasonable inference that the decedent was operating the vehicle distracted by watching videos on her phone, speeding, driving too fast to avoid an accident as well as operating a motor vehicle while impaired. The reasonable inference from the evidence is that decedent was impaired due to existence of two separate and distinct active forms THC substances found in her blood (Delta 9 and 11) which compromised her ability to safely operate a motor vehicle.

I disagree with the characterization of the events of May 31, 2022, as a simple motor vehicle accident, and that decedent's activity was merely driving to deliver supplies to a store without also analyzing the manner in which the employee performed the activity to determine if the decedent's conduct was reasonable and foreseeable to the employer. While it may be reasonable and foreseeable to a Respondent that its employee could be involved in a motor vehicle accident while driving making delivery in furtherance of Respondent's business, and further foreseeable that its employee might exhibit ordinary negligence while accomplishing the task, here the manner in which the decedent performed the activity is neither reasonable nor foreseeable to an employer.

This result would better reflect the evidence presented in this case without significantly expanding the scope of conduct employers must reasonably foresee, as well as the strong public policies expressed in the Illinois Vehicle Code against use of a cell phone to watch or stream video while driving (625 ILCS 5/12-610.2) and against driving while under the influence of THC (625 ILCS 5/11-501.2), and that expressed in the Cannabis Regulation and Tax Act ("In the interest of the health and public safety of the residents of Illinois, the General Assembly further finds and declares that cannabis should be regulated in a manner similar to alcohol so that […] (3) driving under the influence of cannabis… shall remain illegal." (410 ILCS 705/1-5(b), (b)(3))[1]

For the above reasons, I respectfully disagree with the majority's opinion and would reverse the Arbitrator's decision.

/s/ *Frank J. Soto*

[1] This approach should also require further analysis under §11 of the Workers' Compensation Act to assess compensability, including applicability of that section's rebuttable presumption of THC intoxication and, if necessary, further determination thereafter whether Petitioner had sustained their burden of proof. As §11 does not appear to have been raised as a defense by Respondent in this case, §11 analysis was not performed in prior decisions, and was not included in the remand instructions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024955
Case Name	Don Eiland v. Accuride Wheel End Solutions
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0290
Number of Pages of Decision	18
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Martin V. Kugia
Respondent Attorney	Corey Hamilton-Buis, Randall Stark

DATE FILED: 10/14/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONALD EILAND,

Petitioner,

vs. NO: 22WC024955

ACCURIDE WHEEL END SOLUTIONS,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 28, 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 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.

OCTOBER 14 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/30/26
FJS/afr
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024955
Case Name	Don Eiland v. Accuride Wheel End Solutions
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Martin V. Kugia
Respondent Attorney	Randall Stark

DATE FILED: 1/28/2026

/s/Michael Glaub, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 27 2026 3.53%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Donald Eiland
Employee/Petitioner

v.

Accuride Wheel End Solutions.
Employer/Respondent

Case # **22** WC **024955**

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 **Michael Glaub**, Arbitrator of the Commission, in the city of **Waukegan**, on **November 18, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 14, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**55,342.99**; the average weekly wage was $**1,248.80**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $78,076.45 for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $78,076.45.

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

ORDER

The Arbitrator finds that the Petitioner's current conditions of ill being in his neck is causally related to the work accident. The Respondent is ordered to authorize, approve and pay for the Petitioner's follow up treatment for his neck, including the neck surgery proposed by Dr. Roh and Dr. Salehi, pursuant to section 8(a) of the Act.

The Respondent shall pay Petitioner temporary total disability benefits of $832.53/week for 238 and 6/7 weeks, commencing 10/9/20-10/9/21, and 4/23/22 through 11/18/25, as provided in Section 8(b) of the Act.

The Respondent is ordered to satisfy the medical bills from UW Health Newberg Road Clinic Family Medicine in the amount of $330.35, UW Health Belvidere Hospital pain Clinic in the amount of $821.95, and to reimburse BCBS in the amount of $2,396.25, as noted in Petitioner's Exhibit 1, pursuant to the Illinois fee schedule

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

JANUARY 28 2026

FINDINGS OF FACT:

The Petitioner is 46 years old and worked for the Respondent for over 25 years. At the time of his accident, he was working in the "cleaning room," which required him to work with brake drums that would come to him down a conveyor line. The drums were the size of a semi wheel and weighed about 130 pounds. (T.9). He worked on his feet all day. The Petitioner testified that he would have to grind the drums using a grinder connected to an air hose that together weighed 15-20 pounds. (T.11). He also had to "palletize" some of the drums by hooking them with a hoist to lift and lower them onto a pallet. It is a manual, not a motorized hoist, so he had to use his own strength to move the drum around with the hoist. (T.13). He would use his whole body to push and pull the 130-pound drums with the hoist to get them into place. (T.14). He would stack the drums four on each layer of the pallet and then place boards on top so he could place another four drums on top. He would stack the drums four layers high, to make a total of sixteen drums per pallet. (T.12). The boards that he placed in between the layers of drums on the pallets were four feet by four feet and a half inch thick, and they weighed 20-25 pounds. (T.14-15). He would lift and carry the boards from their own pallet to place them on the drums. The boards were stacked on their pallet waist high to over his head. (T.15-16). There was no assistive device to grab and carry the boards. He did it himself. (T.16). He would lift and carry fifty or more boards in a typical day. (T.17). His testimony regarding the duties and the accident is not rebutted.

The Petitioner testified he had an accident on 7/14/20 when he grabbed one of the boards to place on the pallet and felt immediate pain between his shoulder blades. (T.17). The accident is not disputed by the Respondent. The accident happened at 1:30 am. There was no nurse on duty at that time. He finished his shift half an hour later and went home. He testified that his pain worsened when he got home. The pain began shooting down his left arm into his left hand with burning sensation down his arm to left hand (T.18). He decided to go to the Emergency Room.

He testified that he went to UW Health/Swedish American Emergency Room at approximately 6:30 am that same day. He testified that when he left the ER, he went to the Respondent that same day and provided the papers from the emergency room. (T.19). At that time his symptoms were the same with numbness in his fingers. (T.20). He was given a light duty restriction from the ER, and the Respondent accommodated his restrictions by having him sweep and dust and do light cleaning. (T.20).

The Petitioner underwent a cervical MRI on August 4, 2020, which was of poor quality because of motion artifact. The radiologist did report a C5-6 disc protrusion with disc material indenting the left spinal cord. (Px. 4, page 802). The Petitioner then began a course of treatment with Dr. Gorelik, a pain management doctor, who administered C6-7 epidural injections on August 27, 2020 and on October 14, 2020. (T. 21; Px. 4, pages 556 and 701). The Petitioner testified that he did not get any lasting relief from the injections. (T. 21). He testified that while he continued to work light duty at that time, his symptoms remained the same with sharp pain down his arm into his left hand with pain in his neck, shoulder blades, and he was taking Gabapentin. (T. 22). He worked light duty until October 8, 2020, at which time the Respondent was no longer able to accommodate his restrictions. (T. 23).

Dr. Gorelik referred the Petitioner to Dr. Muhammad Janjua, a neurosurgeon at Mercy health Clinic, who evaluated the Petitioner on October 21, 2020. Dr. Janjua noted the referral from Dr. Gorelik, recorded the Petitioner's complaints of neck pain down the left arm to the wrist with numbness in the third and fourth digits. His exam noted positive Hoffman sign, numbness in the C6 distribution, and he noted that the MRI showed an acute disc herniation at C5-6 impinging the left cord as well as stretching of the left sided C6 nerve root. He suggested neck surgery and issued an off work note. (T23; Px. 6, pages 258-264).

The Respondent did not authorize the neck surgery right away. The surgery was scheduled for December 11, 2020, but was cancelled due to the Respondent not authorizing the surgery. (T. 24, Px. 6 page 227). The Respondent sent the Petitioner for an independent medical exam with Dr. Babak Lami on December 14, 2020. (T. 24, Px. 10). The Respondent

thereafter eventually authorized the neck surgery which Dr. Janjua performed on March 15, 2021. The surgery consisted of a C5-6 disc replacement. (T. 25, Px. 4, page 263).

The Petitioner underwent post-operative physical therapy at Athletico, followed by a course of work conditioning. (Px. 2). He testified that his symptoms did not improve following his surgery, and he was still having pain in the middle of his shoulder blades, running down the left arm with burning in his left forearm and into his fingers in his left hand. (T. 26). Dr. Janjua left the practice at Mercy Health Clinic shortly after performing the surgery; therefore, he was seen at Mercy by Dr. Szymczak on October 7, 2021. (T. 27). Dr. Szymczak noted his ongoing radicular symptoms, diagnosed cervical radiculopathy, and referred to neurosurgery. (Px. 6, page 48-49). He also noted that the Petitioner was wondering if he could be returned to work. Dr. Szymczak issued a note for him to return to work with no lifting over 50 pounds. The Petitioner testified that before resuming the light duty work, the Respondent asked him to submit to a pre-employment physical and he did so. (T. 28, 29). The Petitioner then resumed light duty work for the Respondent as of October 10, 2021, once again performing the sweeping and dusting and light cleaning duties like he did before. (T. 28).

The Petitioner underwent a cervical MRI on December 13, 2021, which reported C6-7 osteophyte complex resulting in severe left foraminal narrowing and nerve root impingement. (Px. 8, page 51). He was then seen by Dr. Fred Sweet, a spine surgeon at the Rockford Spine Center on December 13, 2021. Dr. Sweet noted the Petitioner's ongoing symptoms. His exam noted positive Spurling's test and depressed triceps reflex on the left. He reviewed the post-operative images and stated that the disc replacement was placed left of the ideal location and may be oversized. He reviewed the MRI from December 13, 2021, and noted significant compression of the C7 nerve root. He stated that the primary symptoms have been from the C6-7 disc related to the work injury when he was lifting boards. He did not agree that the C5-6 disc as seen on the prior MRI was compressing the nerve root. Dr. Sweet recommended a C6-7 fusion. (Px. 8, pages 40-43).

The Respondent sent the Petitioner back to Dr. Lami for another independent medical exam on April 5, 2022. Dr. Lami agreed on the need for the surgery. (Px.10). On April 22, 2022, Dr. Sweet updated the Petitioner's work restriction to no lifting over ten pounds, and the Respondent was unable to provide any more light duty work and began paying TTD again as of April 23, 2022. (T. 30, 32). Dr. Sweet then performed the Petitioner's second neck surgery on May 26, 2022, consisting of a C6-7 anterior cervical discectomy and fusion. (Px. 4, page 24).

Following his second surgery the Petitioner testified, and the records confirm, that he continued to suffer the same symptoms without significant relief. (T. 33). Shortly thereafter Dr. Sweet retired and the Petitioner's treatment was assumed by Dr. Roh, another spine surgeon at Rockford Orthopedics. (T.33). He saw Dr. Roh on August 25, 2022. The Petitioner testified that at that time he still had pain from between his shoulders down his left arm and his left-hand fingers were still going numb, and he began to have pain in his right shoulder as well. (T. 34). Dr. Roh noted the Petitioners history that he did not have significant relief following the surgery, noted the same symptoms that Petitioner testified to. His exam documented diminished sensation in left middle finger, positive Spurling's sign on the left, and persistent range of motion at C6-7. He diagnosed likely persistent left cervical radiculopathy, C5-6 spurring resulting in recurrent or persistent stenosis. He stated that the C6-7 disc was not yet fused and that the right sided shoulder pain may be a sign of pseudoarthrosis. He referred the Petitioner to Dr. Belford at Rockford Pain center for a steroid injection. (Px. 8, pages 33-34). He advised the Petitioner to continue his current off work status. (Px3, page 18).

Dr. Belford administered a C6-7 epidural injection on September 2, 2022. (Px. 5, page 13). The Petitioner testified it did not significantly help his symptoms. (T. 35). He also had a CT and EMG done that Dr. Roh ordered. The cervical CT was done on September 22, 2022 at Forest City Imaging, and the report noted osteophyte complexes from C4-5 to C6-7. (Px. 3, page 14). An addendum to the CT report was dated November 27, 2022, and noted the anterior interbody fixation at C6-7 and noted there to be non-union. (Px. 3, page 12).

The EMG was performed on October 25, 2022, and noted mild chronic radiculopathy. (Px. 8, page 123). On November 10, 2022, Dr. Roh examined the Petitioner again, noted his worsening pain and burning down the left arm into the digits of his left hand along with constant numbness. Dr. Roh suggested surgery, specifically a C5-C7 posterior cervical decompression and fusion, followed by an anterior revision fusion at C5-6 and C6-7 with removal of the disc replacement at C5-6 and revision decompression of both levels with allograft. He kept the petitioner off work. (Px.8, pages 122-123; T. 36). The Petitioner continued receiving TTD at that time.

The Petitioner testified that he wanted to have the surgery, but the Respondent did not authorize it. (T. 36). The Respondent arranged for another independent medical exam. The Respondent did not send him back to Dr. Lami, their first examiner; instead, they sent the petitioner to Dr. Alexander Ghanayem. Dr. Ghanayem reviewed medical records and examined the Petitioner on February 9, 2023. Dr. Ghanayem recorded the Petitioner's ongoing complaints of neck pain radiating into his left arm and hand (Rx 1, page 23), but opined that there was no evidence of nerve compression and opined that the Petitioner did not need any further treatment or restrictions for his neck injury. He also opined that while the first surgery performed by Dr. Janjua was reasonable and necessary and related to the accident, he felt the second surgery, the C6-7 fusion performed by Dr. Sweet, was not related to the work accident. (Rx. 1, page 29).

On April 17, 2023, the Petitioner was seen by Dr. Sean Salehi as an independent medical exam arranged by his attorney. Dr. Salehi reviewed medical records and examined the Petitioner. Dr. Salehi recorded the Petitioner's ongoing complaints of 8 out of 10 neck pain, pain between the shoulder blades that went into his left arm, along with burning sensation in the left arm into the second through fourth digits. (Px. 9, page 14). Dr. Salehi opined that the Petitioner's symptoms and exam findings were consistent with his subjective complaints (Px. 9, page 21) and suggested an updated CT scan. The Petitioner had an updated cervical CT scan on May 27, 2023, at Forest City Diagnostics. (Px. 3, page 10). The radiologist reported that there were multilevel disc lesions and no significant changes compared to the study done on September 22, 2022. Dr. Salehi subsequently reviewed the results of the

updated CT and agreed that additional neck surgery should be done. He noted that the CT showed that there was a solid fusion at C6-7, but that there was bone growth at C5-6; therefore, he agreed with Dr. Roh that the artificial disc at C5-6 should be removed and turned into a fusion. He did not think that Dr. Roh would need to perform a fusion of the C6-7 disc since it had now been fused based on the results of the updated CT study (Px. 9, pages 26-27); but believed that additional surgery at C6-7, a foraminotomy, may need to be done to decompress the nerves at C6-7. He suggested a new MRI to examine the foramen at that level prior to surgery. (Px.9, pages 26, 28, 29). The updated CT was sent to Dr. Ghanayem but did not change his opinion that any additional surgery would not be related to the accident. (Rx. 1, pages 28-29).

The Petitioner testified that he still would like to have the surgery with Dr. Roh and is just waiting for his follow-up visits to be authorized. (T. 38). He has not seen Dr. Roh since August 25, 2022. (T. 38). He continues to have the same symptoms of pain between his shoulder blades that radiates down his left arm and still has the numbness in his fingers. (T. 38, 39). The symptoms affect his daily activities. He has to take breaks if he tries to mop the floor, or wash dishes or fold clothes. He cannot be on his feet for long. (T. 39). He takes Norco and Flexeril for his pain, and he does not sleep well. (T. 38, 39). He testified that prior to the accident, he never had any issues with pain in his neck or shoulders nor had any symptoms in his arms or hands and never had any trouble performing his job duties. (T. 50).

The Respondent terminated TTD benefits as of May 23, 2023, following the IME with Dr. Ghanayem. The Petitioner has not worked since April 22, 2022. He testified that the Respondent has never offered him any light duty work since that date and that he has never at any time refused to perform any light duty work offered by the Respondent. (T. 40). His testimony was not rebutted by any witness or any documents produced by the Respondent. He attended and performed the light duty assignments that the Respondent provided initially after the accident happened, and then again after his first surgery. (T. 41). Prior to resuming light duty work after his first surgery the Respondent asked him to attend a pre-employment physical and he cooperated and attended. (T. 41).

The Petitioner testified that he received a phone call from the Respondent's nurse shortly after his IME with Dr. Ghanayem. He said that she was calling about getting him back to work, and that he would have to take a physical exam again. (T. 44). He testified that he told the nurse that he was still on restrictions from his own doctor and that she said she was unaware of that and would have to check with her boss, named Josh, and get back to him. (T. 45-46). The Petitioner testified that he never heard back from the nurse and he never heard from Josh. (T. 47). Neither Josh nor any nurse testified for the Respondent. The Petitioner testified that he was never told to attend any kind of employment exam and that he would have done so if asked like he had always done in the past. (T. 48).

The Petitioner testified about his vision. The Respondent discovered his vision issues back in 2004 after one of its required annual employment exams. (T. 53). Thereafter the Respondent sent him to eye clinics and paid for and received copies of his medical records for the treatment and testing of his eyes. (T. 53). He explained that after the Respondent became aware of his reduced vision, they stopped requiring him to take the annual eye exams. The last time the Respondent required him to take the eye exam was 7-10 years ago. (T. 55). He was declared legally blind on May 19, 2019, more than a year before the accident. (T. 55). He testified that despite his vision problems, he continued working and performing his regular job duties without problems, other than that they stopped having him drive the forklift. (T. 56).

The Petitioner was terminated October 21, 2024, because per the union contract you cannot be off work for more than two years. (T. 49). The Respondent closed the plant and laid off a remaining employees on January 17, 2025. (T. 50). He was approved for Social Security Disability and began receiving those checks in January 2025. (T. 50).

CONCLUSIONS OF LAW:

The Findings of Fact as stated above are adopted herein.

A. The Arbitrator makes the following findings with respect to issue "F" (causation).

The Petitioner's testimony describing his symptoms since his accident was specific consistent throughout the trial, and that testimony was also consistent with his subjective complaints in medical records as well. The records from all treating physicians consistently report his symptoms of pain between his shoulder blades radiating to his left arm and hand with numbness in his left-hand fingers. The Petitioner reported the same symptoms to all three independent medical examiners and at the trial too.

The Petitioner's subjective complaints are consistent with various objective evidence as well. First, the EMG dated October 25, 2022, demonstrated chronic radiculopathy on the left, the same aide as his radiating pain and hand numbness. (Px.8, pages 103-105). In addition, his clinical exams are consistent. Dr. Sweet's clinical exam on his first visit dated December 13, 2021, found a positive Spurling's sign on the left. (Px. 8, page 40-43). Dr. Roh also found a positive Spurling's sign on the left when he examined the Petitioner on August 25, 2025, after his second surgery. (Px. 3, page 33). In addition, Dr. Salehi found a positive Spurling's sign on the left during his exam on April 17, 2023. (Px. 9, page 19). This is significant because, as Dr. Salehi explained, the Spurling's sign is a test designed to test for cervical radiculopathy from the foramina. (Px 9, pages 19, 20). The surgery that Dr. Salehi suggested for the petitioner included a foraminotomy to address the foraminal stenosis at C6-7. (Px. 9, page 30) (In addition to the removal of the artificial disc at C5-6). Dr. Salehi explained that the Petitioner's radiating symptoms into his arm and hand are from the C6-7 discs, not the artificial disc at C5-6. (Px. 9, page 38). In addition to the positive Spurling's sign by all three of those doctor's, all three also noted numbness in the third digit of the Petitioner's left hand, and as Dr. Salehi explained, the third digit is innervated by the C7 nerve, which comes out of the C6-7 level, not the C5-6 level. (Px. 8, page 25). Dr. Sweet's records also confirm that this is the case. One of the reasons Dr. Sweet stated in his records that the C6-7 disc should have been treated from the beginning is

because of the Petitioner's complaints of numbness in his left long finger (third digit), indicating impingement at C6-7. (Px. 8, page 42). Moreover, Dr. Lami also agreed that numbness in the third digit is typically associated with radiculopathy from the C6-7 disc, not the C4-5 disc. (Px. 10, page 24). The Petitioner testified, and the plethora of records from various doctors all confirm, that the Petitioner has had radiating pain into his left arm with numbness in the third digit from the beginning and continues to do so, and that those symptoms are due to radiculopathy from his C6-7 disc. The records from Dr. Roh and the testimony of Dr. Salehi also confirm that the Petitioner has ongoing neck pain arising from the artificial disc at C5-6, and that said disc should be removed as part of a fusion at that level as well in the proposed surgery. Dr. Salehi opined that the artificial disc at that level was improperly sized. Dr. Salehi testified that the symptoms that are specifically attributable to the improper sizing of the C5-6 disc is neck pain (Px. 8, page 37). It is not disputed that the Petitioner did not have any issues with neck pain, radiating pain, or numbness in his fingers prior to the accident, and these conditions are related to his accident.

The Respondent introduced evidence that the Petitioner has filed a medical malpractice case against his treating doctor, Dr. Mohammed Janjua, among others, for alleged negligence arising from his first surgery. The Petitioner agreed that he filed a medical malpractice case that is still pending in the Circuit Court of Winnebago County. The fact that the Petitioner has alleged malpractice, however, has no impact on the findings herein for several reasons. First, there is no evidence of record that would form the basis of any ruling on whether or not malpractice has occurred. Dr. Ghanayem, the Respondent's examining doctor, reiterated as much in his deposition. When asked if he had an opinion as to whether there was any medical malpractice or violation of the standard of care, he responded: "…***that whole line of questioning requires a different sort of review. I mean, if you're going to give an expert opinion on malpractice or standard of care in that regard, you have to review treating physician deposition transcripts related to that sort of case. And so I haven't done that.***" (Rx. 1, page 16). There was not any testimony from the treating doctor submitted, nor testimony from any other doctors opining that medical malpractice had occurred. The fact that the Petitioner admitted to filing the

Complaint does not establish a legal conclusion that malpractice has occurred. It is merely an admission that he has made the allegations, not a legal conclusion. If it were otherwise, then all the claims on his workers' compensation hearing stipulation sheet would also be legal conclusions and no hearing would be needed to decide his worker's compensation issues either.

Moreover, even if there was a basis to conclude that medical malpractice had occurred, it would not break the chain of causation anyway. Illinois law has long used the "but-for" test to determine whether an intervening incident breaks the chain of causation. Under this analysis, compensability for an ultimate injury is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for the original injury". *Dunteman v. Illinois Workers' Compensation Commission*, 2016 IL. App. (4th) 150543WC.; See also *International Harvester Co. v. Industrial Commission*, 46 Ill.2d 238, 239-241, 263 N.E, 2d 49, 50-51, 55 (1970). As long as there is a but for relationship between work-related injury and the subsequent condition of ill being, the employer remains liable. *International Harvester at 247.* In this case any alleged malpractice from the surgery to the C5-6 disc would not have occurred but for the undisputed accident. All doctors agree, including Dr. Ghanayem, that the first surgery was reasonable, necessary and related. Moreover, as previously noted, the Petitioner's symptoms of radiating pain into the left arm with numbness in his fingers are related to the C6-7 disc, and are not related to any malpractice that might have occurred on the C5-6 disc. As such, a causal connection would still exist nonetheless. The Respondent's reliance on the Zick case is misplaced as the real question in that case was whether the Petitioner's disability resulted from the trauma or from a congenital anomaly. *Zick v. Industrial Commission*, 93 Ill.2d 353 (Ill. 1982, 444 N.E.2d 164.

As a result of the foregoing, the Arbitrator finds that the Petitioner's current conditions of ill being in his neck, including the injuries arising from his symptomatic C5-6 and C6-7 disks, are causally related to his work accident on July 14, 2020.

With respect to issue (J), were the medical services that were provided to the Petitioner reasonable and necessary, and the Respondent paid all appropriate charges, the Arbitrator finds the following:

The Arbitrator finds that all the treatment to date to the Petitioner's neck has been reasonable and necessary. The Petitioner submitted itemized medical bills in Petitioner's Exhibit 1 which contained all the medical incurred to date, and the request for reimbursement from Blue Cross. The Arbitrator hereby orders the Respondent to satisfy said bills and reimbursement claims per the Illinois Fee Schedule.

With respect to issue (K), whether the Petitioner is entitled to prospective medical care, the Arbitrator finds the following:

The Petitioner's complaints of neck and shoulder pain radiating to his left arm and hand with numbness into his fingers on his left hand has been well documented from the beginning. The Petitioner credibility testified that he continues to have these symptoms and would like to follow up with Dr. Roh for treatment, including the surgery that he has suggested. While Dr. Ghanayem testified that he does not think any additional treatment is needed, he provides no explanation for the Petitioner's ongoing consistent symptoms, and his opinion that there is no nerve compression is inconsistent with the clinical exams of all the other physicians. Dr. Roh's records, Dr. Sweet's records and the testimony of Dr. Salehi indicate that the Petitioner's complaints are well explained by objective clinical exams discussed previously, and the diagnostic studies. None of the examining doctors found positive Waddel signs or concluded that the petitioner was malingering. The Arbitrator finds the Petitioner's testimony credible and orders the Respondent to authorize and pay for his follow-up treatment with Dr. Roh, or any spine surgeon that may remain within his allowed choice of physicians, for the treatment of his neck including the proposed surgery to his C5-6 and C6-7 discs.

With respect to issue (L), what amount is due for TTD, the Arbitrator finds the following:

The Petitioner's treating doctors at Rockford Spine Center have not released the Petitioner back to work since Dr. Sweet performed his C6-7 fusion surgery on May 26, 2022.

Dr. Sweet stated that he should be off work as of June 29, 2022. (Px. 8, page 35). Dr. Roh's records thereafter indicate he should continue with the same work status. (Px. 3, page 18). Dr. Salehi testified that he suggested a ten-pound lifting restriction. (Px. 9, page 43). It is not disputed that he cannot perform his full job duties within that restriction. Moreover, the Petitioner is not at MMI as he awaits approval for his neck surgery and the Respondent terminated him on October 21, 2024, and the Respondent closed the plan and terminated everyone else on January 17, 2025.

As a result of the foregoing, the Arbitrator orders the Respondent to pay TTD for the time periods that he has not worked since his accident, or from 10/9/20-19/9/21, and from 4/23/22-11/18/25, the date of trial. The Respondent shall receive a credit for TTD paid to date.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC039341
Case Name	Doug Harp v. Caterpillar
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0291
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	G. Douglas Stephens
Respondent Attorney	Daniel Simmons

DATE FILED: 10/14/2026

/s/Stephen Mathis, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOUG HARP,

Petitioner,

vs. NO: 13 WC 039341

CATERPILLAR, 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 accident, notice, causal connection, medical expenses, and temporary total disability and being advised of the facts and law, affirms with corrections, as set forth herein, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission hereby makes following corrections to the Decision of the Arbitrator, on page 6 of the Decision under the heading "Medical Evidence" the Commission strikes paragraph 4

regarding judicial notice. On page 7, the Commission strikes the first paragraph which begins, "It's of additional interest…". The Commission also strikes the last paragraph on page 15.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's claim for benefits is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 8, 2025, is hereby affirmed with corrections as stated herein.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

OCTOBER 14 2026

/s/*Stephen J. Mathis*

o: 9/15/26

Stephen J. Mathis

SJM/msb

44

/s/*Kathryn A. Doerries*

Kathryn A. Doerries

/s/*Amylee H. Simonovich*

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC039341
Case Name	Doug Harp v. Caterpillar
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	G. Douglas Stephens
Respondent Attorney	Jessica Bell

DATE FILED: 12/8/2025

/s/Kurt Carlson, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 2 2025 3.64%

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

Douglas Harp **13 WC 039341**
Employee/Petitioner/ gdstephens@sfmlegal.com
v.
Caterpillar
Employer/Respondent/ jbell@heylroyster.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **September 26, 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 **prospective medical**

FINDINGS

On **9/20/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**54,558.40**; the average weekly wage was $**1,049.20**.

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

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

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

Respondent shall be given a credit of $**0.0** for TTD, $**0.0** for TPD, $**0.0** for maintenance, and for short-term and long-term disability benefits provided as agreed by the parties.

Respondent is entitled to a credit under Section 8(j) of the Act as agreed by the parties.

ORDER

BECAUSE PETITIONER DID NOT SUSTAIN AN ACCIDENT THAT AROSE OUT OF AND OCCURRED IN THE COURSE OF HIS EMPLOYMENT, AND FAILED TO PROVE HIS CURRENT CONDITION OF ILL-BEING IS RELATED TO THE ALLEGED ACCIDENT, BENEFITS ARE 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

DECEMBER 8 2025

FINDINGS OF FACT:

Petitioner filed an Application for Adjustment of Claim alleging injuries to both eyes as a result of his employment with an alleged accident date of September 20, 2012. This matter proceeded to arbitration before Arbitrator Carlson on Petitioner's 19(b) Petition. At the time of arbitration, the following issues were in dispute: accident, notice, causal connection, average weekly wage, medical bills, TTD, and prospective medical. The parties stipulated Respondent is entitled to a credit for short-term disability benefits paid, long-term disability benefits paid, and group health insurance payments.

Petitioner, Doug Harp, testified he began working for Respondent, Caterpillar, in July 1994. Petitioner was hired as a welder, working in the same department during the duration of his employment, excluding a brief period when he was transferred to a different location. Petitioner testified his job as a welder was to fabricate parts together, either welding parts entirely himself or in conjunction with a robot. Petitioner testified he sometimes welded things for maintenance, to fix products or items that were damaged. (Trial Transcript, pgs. 9-11).

Petitioner described his job as a welder required equipment, such as gloves, leathers, and a weld helmet. He testified to different weld helmets that he used while working for Respondent. Petitioner testified the most recent style of weld helmet he wore had speed lenses that darken as soon as the "button" to begin welding is pushed. Just prior to the speed lens, Petitioner testified he had a regular solid lens, gold or yellow in color, which had to be manually lowered when welding began. (TT, pgs. 11-113).

Petitioner testified that sometimes the speed lenses sometimes "flickered," indicating the darkening would sometimes go on and off. Petitioner testified sometimes he couldn't stop welding even if his mask did flicker because the type of weld would be incorrect. Petitioner testified sometimes the battery in the speed lens would die in the middle of the weld. (TT, pgs. 15-18).

Petitioner testified he made $26.23 per hour when working as a welder in 2011, 2012, and 2013. Petitioner indicated $26.23 was the base pay, which included a $2 per hour shift differential for retention. Petitioner testified there was unlimited overtime at Caterpillar for a welder. Petitioner testified his union contract allowed for "forced" overtime at most two hours per day, Monday through Friday. He testified the union contract further allowed for "forced" overtime for eight hours on Saturday, for two consecutive Saturdays. He testified there was overtime offered on Sunday, but not "forced." Petitioner testified he "set a record" for Caterpillar for working somewhere between 250-260 consecutive days, though he did not testify to what year this may have occurred. He testified "sometimes" he had two hours of forced overtime Monday through Friday, "sometimes" it was four hours, and then "sometimes" it was eight hours. Petitioner testified he would "virtually always" take the optional additional overtime hours. (TT, pgs. 23-29).

Petitioner testified his regular workweek in "2011 and 2012" was "at least 70 hours," maybe up to 96 hours. Petitioner testified "it depends" regarding the number of hours worked. (TT, pg. 31).

Petitioner testified he saw Dr. Bond on September 20, 2012 – his alleged accident date – but continued working for Respondent until October 31, 2013. Petitioner testified he had already been treating with Dr. Bond at the time of his September 2012 visit. Petitioner explained he saw Dr. Bond in 1995 for "RK surgery," a procedure suggested by his ex-wife. He testified Dr. Bond offered free "enhancements" anytime they were needed after the RK surgery. Petitioner testified he *did* need enhancements done, approximately five years after the initial RK surgery. He testified he then started having issues after that, requiring "cheater lens." (TT, pgs. 32-33).

Petitioner testified Dr. Bond retired in 2024 and that his physician office closed in June 2025. (TT, pgs. 33-34). Petitioner testified Dr. Bond referred him to Dr. Stonecipher, who practices in North Carolina with the Piedmont Eye Group. (TT, pg. 34). Petitioner testified he has had thirteen procedures in his left eye and seven in his right eye since September 2012. Petitioner testified Dr. Bond treated him for "various things and stuff." He testified that he cataracts and a problem with his cornea, worse on his left eye than right. (TT, pg. 35).

Petitioner testified Petitioner's Exhibit 11 includes bills for treatment since September 20, 2012, but indicates it is not comprehensive because neither Drs. Wilson nor Stonecipher charged for their treatment. He also indicated there were "some things" Dr. Bond did not charge for either. (TT, pg. 37).

Petitioner testified he has an appointment pending with Dr. Price, a physician in Indiana, for bilateral corneal transplants. He testified he would like to return to welding. He testified his group medical treatment will not pay for the treatment with Dr. Price. (TT, pgs. 37-38).

Petitioner testified he was not paid "workman's comp" for the time he was off work, but agreed he received short-term and long-term disability benefits. Petitioner further testified his medical bills for his eye treatment has been paid through his group health insurance with Respondent. (TT, pgs. 40-41).

On cross-examination, Petitioner testified he worked for two different employers welding before he began his employment with Caterpillar in January 1995. He worked for Johnson Hydraulics from 1984-1988, Allied Welding from 1988 – 1993, and then returned to Johnson Hydraulics from 1993 until he joined Caterpillar. (TT, pg. 42).

On cross-examination, Petitioner testified he did not know how many hours he worked the week of September 10, 2012 – the week before his alleged accident date. He testified he could not recall how many hours he worked the week of September 3, 2012, two weeks before his alleged accident date. He further testified he did not know how many hours he worked during any pay period in 2012. (TT, pgs. 43-44).

On cross-examination, Petitioner expanded on his treatment with Dr. Bond prior to September 2012. He denied that the 1995 procedure was LASIK surgery. He admitted he had a good result from the 1995 surgery, as he no longer required glasses. Petitioner admitted he was wearing eyeglasses to correct vision problems prior to seeing Dr. Bond in 1994, in fact, wearing glasses since he was 16 years old. (TT< pgs. 44-46).

Petitioner testified that while he did not work anywhere since October 31, 2013, he did mow grass "at the marina" for which he was paid. He testified he was paid $60 every time he mowed grass, moving every 2-3 weeks for approximately four months of the year. He testified he stopped that arrangement "maybe three years ago." (TT, pgs. 46-48).

MEDICAL EVIDENCE

Petitioner submitted medical records documenting treatment related to his bilateral eyes. Petitioner's Exhibit 9 is medical records from Bond Eye Associates, consisting of 918 pages of treatment from March 28, 2013, through June 3, 2025. Petitioner also submitted Petitioner's Exhibit 10, medical records from Piedmont Eye Surgical and Laser Center, consisting of a single visit from June 13, 2018. Respondent submitted medical records documenting treatment of Petitioner's bilateral eyes from Bond Eye Associates, from April 27, 1999, through March 7, 2013.

Petitioner's medical records document treatment to both eyes as early as December 1998. (Rx. 4, pg. 1). On February 2, 2005, Dr. Bond provided a note indicating Petitioner would need "different levels of darkness" due to having RK Surgery. (Rx. 4, pg. 4). Approximately one year later, on April 13, 2006, Dr. Bond provided a note indicating "due to having RK surgery, Mr. Harp may have permanent light sensitivity." He further indicated Petitioner will need to wear sunglasses, depending on the level of brightness and glare in his work environment. (Rx. 4, pg. 5). There is no mention of welding in the records.

The Arbitrator further notes that the diagnosis commonly known as welders' flash burn is either "photokeratitis" or "UV keratitis" but neither are found in Dr. Bond's records. Further, this no history of corneal abrasions, exposure to fumes, sparks or chemical irritation to the Petitioner's eyes in his records. Therefore, there is no corroborating or contemporaneous medical history of any occupationally caused corneal thermal burn in the records. Finally, there is no documentation of the Petitioner not wearing his protective equipment in Dr. Bond's records or did the Petitioner ever testify at trial that he did not wear his protective gear at work.

The Arbitrator takes judicial notice that the auto-darkening feature in welding helmets is not necessary for providing full protection against UV and IR radiation. Both auto-dimming helmets and passive helmets can fully and effectively block harmful UV and IV rays.

On September 13, 2012, Petitioner presented for treatment with Dr. Bond with complaints of decreasing visual acuity in both eyes for several months. He further indicated near visual acuity has also decreased in both years over the last 4-5 years. (Rx. 4, pgs. 9-10). Dr. Bond recommend surgery on September 17, 2012. His note indicates a diagnosis of bilateral cataracts (OU), with recommended bilateral cataract removal. The right eye was scheduled for September 20, 2012, and left eye September 28, 2012. (Rx. 4, pg. 12). Petitioner saw Dr. Bond on September 21, 2012, for a post-op appointment. The note indicates Petitioner was "one day post op cataract extraction with intraocular lens (IOL) for the right eye (OD). (Rx. 4, pg. 11). Petitioner followed up September 29, 2012, for a "one day post op cataract extraction with intraocular lens (IOL) for left eye (OS).

(Rx. 4, pg. 13). At a follow-up visit on October 16, 2012, Petitioner complained of persistent watering eyes and indicated the only relief he could get was from keeping both eyes closed. (Rx. 4, pg. 17). On November 6, 2012, Petitioner reported floaters, flashes, and light sensitivity, noting he wears two pairs of sunglasses often. (Rx. 4, pg. 18). There is no mention of welding in any of the above visits.

It's of additional interest to the trier of fact that the Petitioner mentioned that "he was told enhancements would be N/C for life." The Arbitrator interprets "adjustments" to mean refractive enhancements if a patient's vision shifts in the future. More importantly, the abbreviation "N/C" is interpreted as no charge, or free of charge. Noting that it was the custom and practice of ophthalmologists of offer this service package to their patients in the 1990's as an enticement to undergo RK surgery. LASIK surgery providers, which replaced RK, still offer it, although it is not a universal standard.

Petitioner underwent a Photorefractive keratectomy (PRK) to the left eye (OU) on December 7, 2012. (Rx. 4, pg. 25). At a follow-up visit on December 13, 2012, Petitioner indicated his visual acuity had decreased since the procedure, indicating his vision "comes and goes," but indicated improvement at a follow up December 27, 2012. (Rx. 4, pgs. 29-30). There is no mention of welding.

Petitioner underwent a corneal cross-linking procedure on February 21, 2013. (Rx. 4, pg. 36). He followed up February 22, 2013, February 27, 2013, and March 7, 2013, for post corneal cross-linking exams. On March 28, 2013, Petitioner followed up again for follow-up after cross linking in both eyes, with complaints of floaters in both eyes. This note documents Petitioner's prior procedures, including two procedures for which medical records were not provided: Radial Keratotomy (RK) to both eyes in 1995 and RK Enhancement to both eyes in 1998. Petitioner's floaters persisted, and he continued following up with Dr. Bond with visits on April 16, 2013, May 7, 2013, and July 16, 2013 (Px. 9, pgs. 1-22). There is no mention of welding.

Petitioner returned October 22, 2013, with complaints of bilateral vision being not "sharp," glossy eyes, friends being able to observe the intraocular lens moving on the eye, difficulty seeing yellow letters on green backgrounds, and right eye pain. The note indicates Petitioner also wanted to discuss a "letter" he wanted Dr. Bond to write. Petitioner's diagnosis remained pseudophakia, bilateral eyes. Petitioner was to return in 2-3 weeks. (Px. 9, pgs. 23-29).

Petitioner returned much sooner on November 1, 2013. At this visit, Petitioner reported poor visual acuity in both eyes, and complained of black floaters with tails, indicating he may have anywhere from two dozen to hundreds in his eyes. He indicated he had been suspended from work because of his vision, indicating he missed a crack. Petitioner diagnosis remained pseudophakia, and the plan indicated there "is a lot of fluctuation in eyes." Petitioner was provided a work excuse, and temporary plugs were provided at the visit. (Px. 9, pgs. 30-34).

There is a note of a follow-up November 6, 2013, with no history or current complaints noted. The plan simply indicated Petitioner was "unable to work until cleared by Dr. Bond." (Px.

9, pgs. 35-38). On December 3, 2013, Petitioner followed up for corneal cross-linking, noting vision was improved, but still blurry, complaining of persistent flashes. He also inquired about a "note sent to work," though the record does not provide further details. Petitioner also received new glasses at this visit. (Px. 9, pgs. 61-70).

Petitioner followed up December 17, 2013. The note indicates the visit was a follow-up for astigmatism for both eyes. (Px. 9, pgs. 71-75). Petitioner continued treating with Dr. Bond in early 2014. At his first visit of 2014, on January 2, Dr. Bond indicated Petitioner would be off work "indefinately" (*sic)*. At a visit May 13, 2014, Petitioner reported blurry vision in both eyes, indicating it started 1 week prior. Petitioner "was welding, couldn't see it clearly." Dr. Bond indicated a refractive error in both eyes, and indicated Petitioner may need a "touch-up" in the left eye. (Px. 9, pg. 129). He continued treating through 2014, with regular follow-up visits every few weeks. (Px. 9, pgs. 130-198).

Petitioner's treatment with Dr. Bond continued through 2015. On April 29, 2015, Petitioner followed up for floaters in both eyes. It appears he saw Dr. Adler at this visit, and the note indicate Petitioner has had "numerous refractive surgeries with Dr. Bond." Dr. Adler diagnosed vitreous floaters, both eyes. The note indicates he warned petitioner of retinal detachment and suggested vitrectomy to address the floaters. (Px. 9, pgs. 217-222).

On November 30, 2015, Petitioner presented for surgical consultation with Dr. Adler for removal of floaters in both eyes. The note indicates the procedure was previously scheduled, but cancelled for insurance reasons, with no further information. Petitioner was to have the floaters removed before Dr. Bond would schedule "surgery for the cornea." On exam, Petitioner was diagnosed with bilateral vitreous opacities, vitreomacular traction of both eyes, and condensation of both eyes. Dr. Adler scheduled vitrectomy of both eyes. (Px. 9, pgs. 263-269).

Petitioner moved forward with vitrectomy of both eyes with Dr. Adler and then continued following up through 2016. On February 8, 2016, Dr. Adler diagnosed horseshoe tears of the retina in, at least, the left eye. (Px. 9, pg. 310-311). Laser surgery to repair the tear was performed February 11, 2016, and again February 19, 2016. (Px. 9, pg. 318-324).

On September 14, 2016, Petitioner saw Dr. Bond and indicated he had "corneal burns from his work." He followed up with the same history on November 15, 2016. The note indicates Petitioner was told Dr. Bond would perform a surgery "that has never been performed before." (Px. 9, pgs. 360-369). On June 27, 2017, Petitioner followed up with pressure and floaters in the left eye. He indicated his left eye was worse than the right, and the right is the same as it "always is," with new floaters. Dr. Bond diagnosed vitreous detachment of left eye and indicated he would "talk to a couple doctors," and then discuss with petitioner in three months. (Px. 9, pgs. 376 – 380). Petitioner did follow up September 2017, with no indication of what Dr. Bond determined with respect to a plan of treatment.

On March 20, 2018, Petitioner saw Dr. Bond. Dr. Bond connected Petitioner to Dr. Stonecipher, who indicated he would perform surgery to address corneal scars in both eyes, planning to do the left first. (Px. 9, pgs. 391-396).

Petitioner saw Dr. Stonecipher in North Carolina on June 13, 2018. He reported a need for readers, indicating his vision comes in and out. Petitioner reported "he has what he considers 'welder's eyes,' with complaints of blurry vision in both eyes constantly. Dr. Stonecipher diagnosed irregular astigmatism of both eyes, pseudophakia of both eyes, history of radial keratotomy, and keratoconjunctivitis sicca of right eye. Dr. Stonecipher's plan notes:

> First had RK with Dr. Bond in 1995. Since then he has had Enhancements with RK. He then had RLE OU followed by CXL OU. Both eyes had multifocal lenses implanted. His biggest issue is at night. Especially 2 lane roads. He complains with more issues OS than OD. (See Px. 10).

Dr. Bond performed PRK Enhancement in the left eye October 5, 2018. Petitioner continued following up with Dr. Bond. On December 13, 2018, Petitioner reported his vision changes "day by day." Dr. bond diagnosed filamentary keratitis late 2018 and recommended a procedure January 2019. Petitioner's insurance would not cover the procedure, and Petitioner had not met his deductible yet, so the procedure was rescheduled. (See Px. 9 generally, pg. 543).

Petitioner reported an inability to see out of his left eye on March 19, 2019. His treatment with Dr. Bond continued, with consistent complaints of vision issues and pain. Petitioner followed-up regularly. Dr. Bond continued to provide medications, primarily to the left eye for a left eye corneal scar. On January 21, 2021, Petitioner presented for treatment of a corneal scar, right eye, but the visit diagnoses and treats the left eye. (See Px. 9).

On June 22, 2021, Petitioner returned to Dr. Bond for evaluation of a corneal scar to the left eye. Petitioner said his vision might be a touch better in the left eye, but indicated both eyes have been blurry for a while. He denied eye pain. He was actively using prescribed drops to the left eye, per Dr. Bond. Dr. Bond's diagnosis remained corneal scar, left eye. His plan indicated "needs to be off work for July – September due to eye condition still going on." (Px. 9, 707-709). On January 18, 2022, Dr. Bond released Petitioner to return to work mowing grass "at the Marina where he stays" without restrictions 2-3 times per month. (Px. 9, pg. 736). On June 7, 2022, Dr. Bond's plan included a note that "Sandy needs to do paperwork for him for months of July, August, and September." (Px. 9, pg. 754).

On July 20, 2023, Petitioner followed up for continued treatment for left corneal scar. This visit also included a new diagnosis of "secondary cataract, bilateral." (Px. 9, pg. 822). On September 6, 2024, Petitioner saw Dr. Bond for continued follow up of a corneal scar in the left eye. Petitioner was told Dr. Bond was retiring, so he was referred to Dr. Wilson. The note also indicate Dr. Bond indicated he would "come out of retirement" for further surgery for Petitioner, indicating Petitioner did not have to pay "any bill he gets from us." (Px. 9, pg. 891).

On October 28, 2024, Petitioner returned for a follow-up visit at Bond Eye Associates. He provided a history of an accident at work where his corneas were burned 11 years prior. Petitioner inquired about contact lenses for both eyes before considering corneal transplant. Dr. Wilson did not think Petitioner was a candidate for contact lenses and recommended Petitioner speak to Dr. Bond about Dr. Price in Indianapolis for corneal transplant. He was also instructed to wear his glasses at all times. (Px. 9, pgs. 897-901). He followed up November 26, 2024, and indicated he was not wearing his glasses. A referral to Dr. Price was provided at this visit. (Px. 9, pgs. 902-905).

On January 28, 2025, Petitioner reported he was unable to see Dr. Price due to him being out of network for petitioner's insurance. The note indicates Petitioner was working on going through workman's comp as a result. (Px. 9, pg. 907).

No records from Dr. Price were submitted into evidence.

Dr. Bond authored a note for Petitioner on September 25, 2014, and it was entered into evidence as Petitioner's Exhibit 5. Dr. Bond relates Petitioner's cataract removal to his time as a welder. Dr. Bond also authored a note for Petitioner one month later on October 23, 2014. The note was entered into evidence as Petitioner's Exhibit 6. Dr. Bond indicates Petitioner had been a patient for several years and notes some of the treatment he had prior. Dr. Bond indicates Petitioner developed posterior subscapular cataracts and that there was "no doubt" in his mind that it can be ascribed to welding. He indicates Petitioner had reported "numerous examples of his failure to use equipment." Dr. Bond went on to indicate Petitioner had reported exposure to sparks, arcs, "and other problems that I am not that knowledgeable enough to comment on." He further indicates it was documented in literature that this type of cataract is seen in welders. Both the September 2014 and October 2014 letters from Dr. Bond were prepared just a few months after Petitioner's visit on May 13, 2014, where Petitioner reported an increase in blurriness in both eyes, noticed one week prior when he was welding. (See Px. 5, 6, and generally 9).

At the request of Respondent, Petitioner submitted to an Independent Medical Exam with Dr. Mark Daily with Wheaton Eye Clinic on July 8, 2015. Dr. Daily's office note and opinion were introduced into evidence as Respondent's Exhibit 1. Dr. Daily diagnosis was status post radial keratotomy bilateral, status post LASIK bilateral, bilateral pseudophakia, and bilateral corneal irregularity. Dr. Daily noted unprotected welding can cause an acute injury to the ocular tissues, but noted recovery is usually rapid with no long-term effect. He indicated one *could* find data to support cataracts as a result of welding, but indicated the data to support that correlation was "weak." Dr. Daily referred to an article on the issue, and it was attached to his report and entered into evidence. Dr. Daily noted there was no opacification of either cornea, which suggests Petitioner's corneas were *not* injured as a result of welding. Dr. Daily opined Petitioner's vision issues were the result of multiple surgical procedures performed on both eyes, and not the result of welding.

DEPOSITION TESTIMONY OF DR. BOND

Dr. Bond was deposed on March 3, 2023, by the parties and the deposition transcript was entered into evidence. Dr. Bond testified he saw Petitioner September 20, 2012, with a history of decreasing vision in both eyes. He noted the history of treatment he'd had, with Petitioner's complaints of difficulty night driving. Dr. Bond noted Petitioner did not provide a history of his job at the time of that visit. The following exchange occurred at Dr. Bond's deposition on direct examination:

> Q: Doctor, over the course of your treatment of Mr. Harp did you perform approximately 12 or 13 surgeries on his eyes?
>
> A: It says that I did. We have an RK years before that which is a radial keratotomy and this was enhanced in '98. There was then a PRK which is a laser surface treatment done 14 years later and followed by a cataract and – yes. These are cross-linking which serves to try to stiffen the cornea.
>
> Q: I'm not sure if you responded. Was it 12 or 13 surgeries approximately that you performed?
>
> A: Well, the horseshoe tear of the retina without attachment would have been my partner and the vitrectomy was my partner, Dr. Adler. (Px. 7, pgs. 9-10).

Further questioning:

> Q: Why was it necessary to do so many surgeries on Mr. Harp?
>
> A: It's hard to say. You do them when they come up, and this is a record that's covering a pretty large number of years and people get different things. He was highly nearsighted. A lot of the time when the highly nearsighted people come it's a different kind of prescription, the eye is a little bigger and longer, you have a more variable structure, things are a little bit thinner. These were just things as you go through your life, you know. (Px. 7, pg. 11).

Dr. Bond read the narrative he wrote September 25, 2014, into the record. He answered "yes" when asked if his opinion remained the same. He subsequently read the letter he wrote dated October 23, 2014, into the record and indicated his opinion remained the same. Dr. Bond indicated he would not recommend Petitioner return to welding as of the time of his deposition and indicated he had not returned him to work since Petitioner "first saw" him on September 20, 2014. Dr. Bond testified Dr. Stonecipher is a friend of his, and he reached out to him to treat Petitioner. Dr. Bond confirmed he asked Dr. Stonecipher to treat Petitioner "as a favor," and not charge him. (Px. 7, pgs. 12-14, 17-18).

On cross-examination, Dr. Bond admitted he did not know when he started treating Petitioner. He acknowledged his first medical record showing the earliest surgery as 1995, but

admitted he would not have performed a procedure on the first day he saw Petitioner, so he must have been treating him for some period prior to that 1995 procedure. Dr. Bond testified that the 1995 keratotomy was done to address nearsightedness. Dr. Bond testified Petitioner's nearsightedness has "nothing to do" with his employment. (Px. 7, pgs. 19-20).

Dr. Bond explained the keratotomy procedure, indicating the process requires making an incision into the cornea and manipulating the cornea to improve vision. He explained it was a predecessor to Lasik. Dr. Bond confirmed the goal of a keratotomy is to cause scarring on the cornea to improve the vision. He subsequently performed an RK Enhancement in 1998, which was a touchup to the 1995 procedure and not uncommon in highly nearsighted people that may have some peeling and change over time. Dr. Bond agreed that treatment was not related to Petitioner's employment. (Px. 7 pgs. 20-22).

Dr. Bond explained the corneal cross-linking he performed. He indicated the purpose of the procedure is to strengthen the cornea so that it does not continue to weaken and lose its shape. Dr. Bond indicated the process of the cornea weakening is called keratoconus. The cross-linking procedure is to prevent further weakening. Dr. Bond agreed Petitioner's condition of keratoconus was not related to his employment. Dr. Bond also testified that keratoconus causes very poor vision. He indicated a risk of the cross-linking procedure is further damage to the cornea. Dr. Bond also indicated that an RK procedure is a "weakening procedure" also. (Px. 7, pgs. 25-27).

Dr. Bond admitted Petitioner's retinal tear was the result of his nearsightedness condition. (Px. 7, pgs. 27-28). Dr. Bond testified Lasik is done to address nearsightedness, farsightedness, or astigmatism. He agreed none of those conditions were related to Petitioner's employment. (Px. 7, pgs. 29-30). Dr. Bond testified he performed PRK enhancement October 2018 to address Petitioner's nearsightedness, a touch up from the June 2018 Lasik procedure. Dr. Bond testified Petitioner developed keratitis following the October 2018 PRK procedure. He agreed keratitis can cause scarring to the cornea if left untreated, which occurred in Petitioner's case. (Px. 7, pgs. 31-32).

On re-direct, Dr. Bond was asked "Is it the brightness of the light when one welds that causes the injury to the eyes?" to which he replied "I don't know. I don't think anybody knows. I mean I - ." (Px. 7, pg. 34).

DEPOSITION TESTIMONY OF DR. MARK DAILY

Dr. Daily was deposed on May 22, 2023, and the deposition transcript was entered into evidence as Respondent's Exhibit 2. Dr. Daily testified consistent with the report he prepared following his examination of Petitioner. Dr. Daily noted the findings of his examination, including scarring on the right cornea from the radial keratotomy procedure, and an intraocular lens from a prior cataract surgery. He noted radial keratotomy scars on the left eye, with additional scarring on the left cornea and an intraocular lens. With respect to his diagnosis, Dr. Daily testified:

> "He had corneal changes from having had radial keratotomy in both eyes. He had corneal changes from having had LASIK in both eyes. He had cataract surgery, so he had intraocular lenses in both eyes. Testing showed that his corneas had some irregularity to them in both eyes, and I felt that his retinas were normal." (Rx. 2, pg. 12).

Dr. Daily testified Petitioner's retinas showed no damage that could be attributed to welding. He indicated welding injuries would cause an acute injury, with redness and swelling that resolves in a few days. He found no evidence of retina damage from welding in Petitioner's eyes. Dr. Daily also indicated he did not see anything on the corneas to indicate that, other than the surgeries, multiple surgeries he had, there was any reason to attribute that to welding.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on September 20, 2012, and whether Petitioner's current condition of ill-being is causally connected to the accident, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on September 20, 2012, which arose out of and in the course of his employment by Respondent and that his current condition of ill-being is related to the alleged accident of September 20, 2012.

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Further, as the Supreme Court of Illinois noted in *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 505 N.E.2d 1026 (1987), "an employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury; there must be a showing that the injury is work-related and not a result of the normal degenerative aging process."

Petitioner's medical history with respect to treatment and diagnoses of his eyes is a long, complicated history. While medical records were introduced showing treatment as early as 1995, Dr. Bond admitted he was likely treating Petitioner prior to the procedure performed at that time and Petitioner admitted he wore glasses since he was 16 years old. Since his first procedure with Dr. Bond in 1995, Petitioner has had numerous procedures performed by Dr. Bond or his associates, Drs. Adler and/or Wilson. Dr. Bond also connected Petitioner with his friend, Dr.

Stonecipher in North Carolina, to perform a unique procedure at no cost. Dr. Bond's office recently referred Petitioner to Dr. Price in Indianapolis, Indiana for a corneal replacement.

Dr. Bond provided generic causation opinions in support of Petitioner's eyes, with the opinions being contradicted by his own medical records or subsequent testimony. At his deposition, Dr. Bond testified Petitioner's "injuries to his eye" were because of his long-time welding, without distinguishing the Petitioner's significant, separate conditions and procedures. When asked why Petitioner had so many surgeries to his eyes, he made no mention whatsoever of Petitioner's employment with Respondent or welding. Instead, he pointed to Petitioner's condition of being "highly nearsighted" and noting the natural progression "as you go through life." Later in the same deposition, he directly contradicted himself when asked the pointed question as to whether welding caused the need for Petitioner's surgeries, answering "without a doubt," when he had just indicated he wasn't sure why Petitioner had so many surgeries just earlier in his testimony.

Dr. Bond also authored two "reports," suspiciously within one month of each other. In September 2014, Dr. Bond opined Petitioner's "corneal astigmatism with some scarring" was attributable to welding and caused him to have other symptoms. In his deposition, however, Dr. Bond testified Petitioner's nearsightedness and astigmatism were ***not*** related to his employment with Respondent. Dr. Bond testified the radial keratotomy and RK enhancement were not related to Petitioner's employment with Respondent. Dr. Bond testified Petitioner's keratoconus was not related to his employment with Respondent. Dr. Bond testified the corneal cross-linking procedure is to strengthen the cornea, to address Petitioner's keratoconus caused by the RK and PRK enhancement. Dr. Bond testified Petitioner's nearsightedness caused the retinal tear. Dr. Bond testified Petitioner developed keratitis after the PRK enhancement, which caused corneal scarring.

In his October 2014 opinion, Dr. Bond indicated he was "not knowledgeable enough" to comment on some aspects of welding, but indicated a correlation between welding and cataracts was "well-documented" in the literature. Neither Dr. Bond nor Petitioner presented any such literature to support this opinion. Dr. Daily provided evidence to the contrary, noting that while one could surely *find* literature to support a connection if they looked hard enough, the support is weak. In fact, he provided an opinion to the contrary, indicating there is no evidence to relate welding to the development of cataracts. Dr. Daily further indicated neither Petitioner's retinas nor corneas showed anything suggestive of damage from welding, and instead pointed to the more obvious connection – Petitioner's clearly problematic eyes and multiple surgeries.

Dr. Bond's opinion regarding causation is not credible. Not only does Dr. Bond contradict himself with respect to his testimony multiple times in his deposition, but also the medical records. Further, the arbitrator notes Dr. Bond's two causation opinions, authored in September 2014 and October 2014, come just a few months after Petitioner reported to Dr. Bond on May 13, 2014, that he had been welding the week prior and his eyes became blurry. Dr. Bond had previously taken Petitioner off work indefinitely ***prior*** to this visit on January 2, 2014. In fact, Petitioner testified he last worked for Respondent October 31, 2013. By his own testimony, Petitioner was not working for Respondent in May 2014 and, in fact, had been taken off work by Dr. Bond, but was

welding somewhere in May 2014 when he experienced a problem with his eyes. Just after that incident, Dr. Bond gratuitously authors two opinions within just weeks of each other regarding Petitioner's eye problems, yet his medical records make no other reference to welding or the cause of Petitioner's long-standing, significant eye problems.

Petitioner testified he last worked for Respondent October 31, 2013. Coincidentally, Petitioner saw Dr. Bond on November 1, 2013, at which time he reported being suspended from work due to missing a crack in a weld. Dr. Bond provided a note restricting Petitioner from work, even though his condition, diagnosis, and treatment plan had not changed since the October 22, 2013, visit where Petitioner was *not* restricted from work. Incidentally, Petitioner's application for adjustment of claim alleging these bilateral eye issues was not filed contemporaneous with the alleged accident date of September 20, 2012. Rather, Petitioner did not file his application for adjustment of claim until November 11, 2013, after he had been suspended from work.

Petitioner's medical records do not support a finding that Petitioner's bilateral eye issues are related to his employment and the arbitrator does not find Dr. Bond's conflicting, incoherent testimony at his deposition to be reliable in support of causation. The arbitrator accordingly finds Petitioner failed to prove an accident that arose out of and occurred in the course of his employment and that his current condition of ill-being is related to the alleged accident.

It seems more likely to the trier of fact that Petitioner's initial eye surgeries were to correct common nearsightedness (myopia) so that he would no longer need to wear glasses. There was no evidence of photokeratitis or UV keratitits (corneal burn) in the records as noted by Dr. Daily, Therefore, Petitioner's condition could not be directly caused by welding as opined by Dr. Bond. Further, no medical literature supports Dr. Bond's opinion regarding direct causation and the corneal scarring was caused by recovery from the multiple surgical procedures and implants and not from welding. In sum, Dr. Daily's opinion, although not perfect, makes the most sense to the Arbitrator.

It's noted by the Arbitrator that future adjustments were contemplated back in 1995 and the risk of them significantly was increased by several, non-occupational, factors. First, the quality of initial procedure (RX 4 pgs. 4-5). Second and third, the patient's pre-existing conditions (diabetes and myopia) are commonly known to increase cataract risk and finally; lifestyle (yacht life) which heightens exposure to (UV) radiation as it reflects off water surfaces. One wonders if Dr. Bond would have offered free adjustments for life if he'd noted that Petitioner was a diabetic (delayed wound healing) and lived at a marina during the summer months. (T p.46) A person with a strong index of suspicion might imagine that the workers' compensation claim was created to remedy the financial losses that Dr. Bond created by offering them. Finally, and ironically, there's also a strong argument here that the safest place for the Petitioner's eyes was when he was at work wearing his protective equipment.

Considering the Arbitrator's determination that Petitioner failed to prove an accident that arose out of and occurred in the course of his employment, and that his current condition of ill-being is related to the alleged accident, the Petitioner's request for medical bills, TTD benefits, and prospective medical treatment are denied. All other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC027898
Case Name	Jaspal Mann v. J.B. Hunt
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0292
Number of Pages of Decision	20
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Adam Rosner, Brenton Schmitz
Respondent Attorney	Michael Jasper

DATE FILED: 10/16/2026

/s/ Raychel Wesley, Commissioner

Signature

26IWCC0292

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASPAL MANN,

Petitioner,

vs. NO: 24 WC 27898

JB HUNT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident with respect to Petitioner's left shoulder/cervical spine, whether Petitioner's current right hand/wrist and left shoulder/cervical spine conditions of ill-being are causally related to the April 3, 2024 accidental injury, entitlement to medical expenses, as well as prospective medical care, and entitlement to temporary disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

I. Accident

Left Shoulder/Cervical Spine

The Commission affirms the ruling in the Decision of the Arbitrator denying accident with respect to Petitioner's left shoulder/cervical spine condition.

Right Hand/Wrist

The Commission affirms the finding of accident concerning Petitioner's right hand/wrist condition, as this accident was stipulated by the parties.

II. Causal Connection

Left Shoulder/Cervical Spine

With a finding of no accident with regards to Petitioner's left shoulder/cervical spine condition, a discussion of causal connection for this condition is moot.

Right Hand/Wrist

Upon analyzing the evidence, the Commission modifies the Decision of the Arbitrator as it pertains to causation to the right hand/wrist, and finds that Petitioner's current condition is causally related to the work accident of April 3, 2024.

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. Illinois Workers' Compensation Commission*, 2014 IL App (4th) 130523WC, ¶ 1. 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 Commission*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Commission*, 93 Ill. 2d 59, 63 (1982).

"Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence…The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. For the

Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Vogel v. Industrial Commission*, 354 Ill. App. 3d 780, 786 (2nd Dist. 2005)(citing *Navistar International Transportation Corp. v. Industrial Commission*, 331 Ill. App. 3d 405, 415 (2002); *Pietrzak v. Industrial Commission*, 329 Ill. App. 3d 828, 833 (2002); and *Gallianetti v. Industrial Commission*, 315 Ill. App. 3d 721, 729-30 (2000)).

Here, the record reflects that Petitioner had no right hand/wrist issues prior to the April 3, 2024 accident. His complaints began immediately after the accident and remain ongoing. The Commission finds no evidence of any intervening right upper extremity injury. The record is clear that Petitioner did suffer a right hand/wrist injury on the date in question. Treating physician Dr. Papierski opined that Petitioner's condition was causally related to the accident. This opinion was corroborated by treating physician Dr. Wiesman, who on November 19, 2024, related Petitioner's severe ongoing pain to the instant accident. While Respondent's own §12 examiner Dr. Birman disagreed with the *extent* of the work related injury, he *did* agree that an injury occurred. The Commission finds the opinions of Dr. Papierski and Dr. Wiesman to be more persuasive than those of Dr. Birman, who opined that there was not enough force involved in the mechanism of injury to cause Petitioner's current symptoms. The opinions of Dr. Papierski and Dr. Wiesman are more in line with the evidence. To reiterate, the record is clear that Petitioner had no right hand/wrist issue leading up to the accident date, but began treating for symptoms in this location shortly after the accident, and has suffered from ongoing issues ever since. Petitioner's symptoms never subsided or returned to baseline during treatment. On December 19, 2024, after sustained treatment over an eight-month period, Dr. Wiesman still noted findings in the scapholunate area, which led to his surgical recommendation. At the time of trial in September of 2025, Dr. Wiesman was still awaiting authorization for the surgery.

With no evidence in the record suggesting any pre-accident right hand/wrist issues, nor any alternative causes of Petitioner's complaints contemporaneous to the accident date, the Commission finds that Petitioner's testimony, the medical records, and the opinions of treating physicians support a finding that Petitioner's current right hand/wrist condition is causally related to the instant accident. The Commission so modifies the Decision of the Arbitrator with respect to causal connection.

III. Medical Expenses

§8 of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical, and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" 820 ILCS 305/8(a). Consistent with the above causation analysis, the Commission finds Respondent liable for all reasonable and necessary medical expenses related to the treatment of Petitioner's right hand/wrist condition through the date of trial.

IV. Prospective Medical Care

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

705, 711-12 (2d Dist. 1997). At the time of trial, Petitioner had undergone conservative right hand/wrist treatment from April of 2024 through September 2, 2025. Treatment included wrist bracing, medication, injections, and physical therapy. However, at trial he continued to have pain complaints and difficulty performing activities of daily living. His ongoing symptoms resulted in a surgical recommendation from Dr. Wiesman. Consistent with our causal connection finding, we also award Petitioner the recommended diagnostic arthroscopic right wrist surgery. We find this surgery to be necessary to cure and relieve the effects of Petitioner's ongoing symptoms.

V. Temporary Total Disability

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Industrial Commission*, 372 Ill App. 3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receive TTD benefits, the primary consideration is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

The record reflects that on April 11, 2024, Petitioner was placed on modified duty restricting him to 10 pounds occasional lifting, pushing, and pulling, no use of power/impact/vibratory tools with the right upper extremity, no gripping/squeezing/pinching with the right upper extremity, and constant usage of a splint/brace. *PX 6, p.1171*. These restrictions were continued on April 16, 2024, April 23, 2024 and April 25, 2024. Petitioner testified that his duties as a truck driver would require the use of his right upper extremity to steer an 18-wheeler, operate tractor brakes, open truck doors, and unhooking and dropping trailers. We find that Petitioner's regular truck driver duties exceeded his restrictions, and there is no evidence that any adequate modified duty work was offered by Respondent until April 29, 2024, when Petitioner began working in a food pantry.

On May 8, 2024, Petitioner was placed on restricted duty by Dr. Simon, however, these restrictions were due to Petitioner's unrelated left shoulder/cervical spine condition. Since Respondent provided an avenue for work with respect to Petitioner's right hand/wrist condition, these new restrictions do not give rise to additional TTD benefits.

Subsequently, Petitioner's inability to work was due to his unrelated left shoulder/cervical spine condition, which restricted usage of his left upper extremity, as there is no evidence Respondent ever rescinded the light duty offer that allowed Petitioner to work despite his right hand condition.

On December 3, 2024, after a second right wrist injection failed, Petitioner was taken off of work by Dr. Wiesman. He has not been released to work since, as he awaits surgical authorization. Accordingly, in addition to the period from April 11, 2024 through April 28, 2024, the Commission also awards TTD benefits from December 3, 2024 through the date of trial, September 25, 2025.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 24, 2025, as modified above, is hereby affirmed and adopted.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident related to his right hand/wrist on the date in question.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner did not sustain an accident related to his left shoulder/cervical spine on the date in question.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's right hand/wrist condition of ill-being is causally related to the work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,253.67 per week for a period of 45 weeks, representing April 11, 2024 through April 28, 2024; and December 3, 2024 through September 25, 2025, these being the periods of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of $37,074.29 for benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses related only to Petitioner's right hand/wrist incurred from the date of accident through September 25, 2025, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right wrist arthroscopic surgery recommended by Dr. Wiesman, as provided in §8(a) of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $29,900.00. 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.

OCTOBER 16 2026

/s/ *Raychel A. Wesley*

RAW/wde

O: 8/19/26

/s/ *Carolyn M. Doherty*

43

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC027898
Case Name	Jaspal Mann v. J.B. Hunt
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Adam Rosner, Brenton Schmitz
Respondent Attorney	Michael Jasper

DATE FILED: 11/24/2025

/s/Edward Lee, Arbitrator

Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jaspal Mann
Employee/Petitioner

v.

JB Hunt
Employer/Respondent

Case # **24** WC **27898**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Ottawa**, on **9/25/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/3/24**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**97.785.48**; the average weekly wage was $**1880.49**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**37,074.29** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$37,074.29**.

ORDER

With regard to alleged left shoulder and cervical spine injuries, Petitioner has failed to establish that he had an accident arising out of and in the course of his employment with Respondent or that such conditions were causally related to any alleged work accident. With regard to Petitioner's alleged right hand injuries, Petitioner has failed to prove that his current condition of ill-being is causally related to his injury.

Petitioner has failed to establish that prospective medical care is causally related to his work injury. Respondent is entitled to a credit for medical benefits payments as established by Respondent's Exhibit 18.

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 24 2025

STATEMENT OF FACTS

This matter proceeded to hearing on 9/25/25 before Arbitrator Edward Lee in Ottawa, Illinois.

Jaspal Mann (hereinafter "Petitioner") was employed by JB Hunt (hereinafter "Respondent") as a truck driver (Transcript page 9; T.9). On 4/3/24, Petitioner was preparing a load for home depot. The handle on his door became stuck, and he injured his right hand when striking the handle with his right hand. The handle contacted the middle of his right palm near his thumb. (T.17). Petitioner testified that his hand was pushed back. (T.18).

Petitioner sought medical treatment at Concentra beginning 4/11/24. His complaints were of right hand and wrist pain. (Petitioner's Exhibit 6 at 503; PX 6 at 503). Examination revealed limited range of motion and pain to palpation to the palm. (PX 6 at 504). He was given a wrist brace and recommended to undergo physical therapy. (Px 6 at 508). He was released to light duty work. X-rays of the right hand and wrist were interpreted as normal.

Petitioner began physical therapy. When symptoms did not improve, MRI of the right wrist was recommended and performed on 5/2/24. Impression following the MRI were of no TFCC tear; sprain or tear of the scapholunate ligament without widening of scapholunate interval or rotary subluxation of the lunate; multiple bony contusions of the carpometacarpal articulations. (RX 15; T.32). Petitioner was referred to Dr. Papierski for orthopedic evaluation.

In the interim, Respondent extended an offer of light duty work to Petitioner, and he reported to work at a food pantry stocking shelves on 4/29/24. He worked between 5 and 6 hours on one day before reporting further injury to his left shoulder and neck. (T.22). Petitioner testified that over his one day at work, he was asked to stock a number of different products, including bread, soda milk, refrigerator items, dry pastas, pies, vegetables, cakes, and pasta sauces. (T.23-24). During his shift, he started feeling pain in left shoulder and neck. (T.25).

Petitioner sought medical care at Concentra on 5/8/24, complaining of pain in his left shoulder after repetitively lifting 10 lb boxes. On 5/8/24, Petitioner's complaint was to the posterior shoulder. (PX

6 at 365). There was no mention of neck involvement. Diagnosis at that time was of left shoulder strain. These complaints were repeated at return visit on 5/28/24. (RX 1).

Petitioner had his initial orthopedic evaluation with Dr. Papierski regarding his right hand on 5/29/24. After examination and review of MRI films, Dt. Papierski diagnosed Petitioner with a hand and wrist sprain. (RX 2). According to the medical record of 5/29/24, a detailed discussion occurred between Petitioner and Dr. Papierski. Dr. Papierski responded to Petitioner's concerns regarding scapholunate tear, pointing out that Petitioner had good carpal alignment, no instability of scaphoid and and minimal tenderness over scapholunate interval. He did have tenderness over 4th metacarpal base. (RX 2; T.41-42).

Petitioner was then referred to Dr. Garelick on 6/25/24. X-rays of the left shoulder were interpreted as normal. Petitioner for the first time complained of pain coming from neck. Left shoulder exam revealed a full range of motion, excellent RC strength, no pain in the AC joint, with negative NEER and HAWKINS tests. (RX 3).

Petitioner returned to Dr. Papierski on 6/26/24. Dr. Papierski noted tenderness at carpometacarpal joints 2, 3, 4 with stiffness. Petitioner acknowledged that on 6/26/24 his complaints to Dr. Papierski were at the base of the fingers at the carpal metacarpal joints (T.44-45; RX 4).

Petitioner returned to Dr. Garelick on 7/23/24. Petitioner complained of tenderness to light touch in the area of his trapezius. Petitioner exhibited no shoulder pain. As a result, Dr. Garelick referred Petitioner to Dr. Murtaza for evaluation. (RX. 5).

Petitioner then saw Dr. Papeierski on 7/24/24. Dr. Papierski noted tenderness of carpometacarpal joints 1 and 2, not so much joints 3, 4, 5. Diagnosis at this time was of sprain of carpometacarpal joint of thumb and second metacarpal (index finger). (RX 6).

On 8/5/24, Petitioner underwent initial evaluation with Dr. Murtaza. Petitioner gave Dr. Murtaza a history of developing pain in the left side of his neck beginning after trying to close a trailer door, then

further developed after working in a food pantry for several hours. Petitioner complained of pain in his neck that went into his trapezius and to both the left shoulder and right biceps. MRI of the cervical spine was ordered. (RX 7).

In response, Respondent scheduled an IME with Dr. Shadid regarding Petitioner's neck and shoulder complaints. 2 reports were authored, dated 8/26/24 and 10/3/24. Dr. Shadid concluded that Petitioner's subjective complaints were not supported by objective findings. Dr. Shadid further noted that examination did not support Petitioner's complaints of pain rated at 8 out of 10. Dr. Shadid noted evidence of symptom magnification, specifically opining that there was no correlation between subjective complaints 8/10 and examination, no correlation between subjective complaints and diagnostic testing, and no correlation between mechanism of injury and complaints. (RX. 12, 13).

Petitioner returned to Dr. Papierski on 8/28/24. On that date, Dr. Papierski noted that pain was mostly at the index metacarpal base. Injection was provided into index carpometacarpal joint and 2nd extensor tendon region. (RX 8). On 9/25/24, Dr. Papierski noted that tenderness was fairly consistently localized to index carpal metacarpal joint. MRI of the right hand was ordered. (RX.9). MRI was performed 10/7/24, with the resulting impression being of persistent edema of the carpometacarpal articulations. Tendons and ligaments were noted to be intact. (RX 14).

Respondent then scheduled an IME regarding Petitioner's right hand with Dr. Birman. This examination occurred on 10/22/24. Dr. Birman noted Petitioner's history that he struck a metal bar with the palm of hand. Dr. Birman's diagnosis was of right hand carpometacarpal joint sprains. Specifically, Dr. Birman indicated that he could not reconcile impact occurring in the palm of Petitioner's hand with complaints of 10/10 pain and edema across multiple carpometacarpal joints. Dr. Birman felt that the initial mechanism of injury could cause a palm contusion, but cannot explain injury to multiple carpometacarpal joints. Dr. Birman noted that there were objective findings to the top of Petitioner's hand but not where impact occurred in the palm. Dr. Birman opined that these findings were better

explained by an inflammatory/rheumatologic condition but that he was not able to reconcile these findings with the mechanism of injury. Dr. Birman felt that MRI findings could not be explained by impact to Petitioner's palm. Findings on MRI were much more likely explained as a rheumatologic condition unrelated to work injury. He felt that the current symptoms and treatment cannot be explained by mechanism of injury and therefore were not work related. (RX 16).

Petitioner returned to Dr. Papierski on 10/23/24. Dr. Papierski noted that MRI of the right hand revealed edema of the carpometacarpal joints. His diagnosis was of posttraumatic inflammation of the right hand and wrist. (RX. 11). Upon questioning from his attorney, Petitioner testified that he was never diagnosed with an inflammatory condition. T.40.

Petitioner was then sent by his attorney to Illinois Orthopedic Network. (T.48). He was examined by Dr. Wiesman on 11/19/24 regarding his right hand complaints. (RX 10). At that time, Petitioner alleged pain primarily in his wrist. MRI of the hand and wrist were reviewed, and an injection was administered. The diagnosis was only of hand and wrist pain. Petitioner returned to Dr. Wiesman on 12/19/24. Repeat x-rays were taken that showed no widening of scapholunate interval. Diagnosis remained only of pain of the hand and wrist. Dr. Wiesman recommended a diagnostic arthroscopy to determine the potential cause of Petitioner's pain. (RX. 17).

Petitioner was then seen by Dr. KoutskyMRI 12/12/24. MRI of cervical spine and left shoulder were both reviewed. According to Dr. Koutsky, left shoulder MRI revealed no findings other than mild bursal fluid (PX 3 at 6; PX 4 at 19). Cervical MRI revealed diffuse disc bulging at multiple levels (PX 3 at 7). Dr. Koutsky provided an injection into the left shoulder.

As of the date of hearing, Petitioner testified that he no longer had symptoms relating to the left shoulder or neck. (T.31). It was noted at trial that Petitioner continued the use of his wrist brace. Petitioner acknowledged that his doctors have recommended to wean off wrist brace (T.39).

CONCLUSIONS OF LAW

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

ACCIDENT

Petitioner alleges an injury to his right hand occurring on 4/3/24. He further alleges left shoulder and cervical spine injuries on 4/29/24 while working a light duty job. No Application was filed for the left shoulder and cervical spine injuries. Petitioner alleges that left shoulder and cervical spine symptoms began on the first day of work in his light duty position, when he was assigned responsibility for stocking shelves with multiple different products. His history to his doctors differ in significant ways. Based on the foregoing, the Arbitrator finds that Petitioner did not sustain an accident involving his left shoulder or cervical spine.

Petitioner's complaints to his doctors are inconsistent with his testimony at trial. Petitioner testified to left shoulder and neck complaints after stocking shelves for several hours on 4/29/24. (T.22). When first seen at Concentra, he alleged pain only in his posterior shoulder. (PX 6 at 365). He did not mention any pain in his cervical spine at that visit, or the next visit on 5/28/24. He did not mention neck complaints until 6/25/24 with Dr. Garelick. By 7/23/24, his complaints were now tenderness across the trapezius muscles of his back. By that time, records indicate there were no shoulder complaints. (RX 5).

Petitioner was then referred to Dr. Murtaza on 8/5/24. His complaints at this time were of left sided neck pain that radiated into both arms. When he saw Dr. Koutsky on 11/19/24, he alleged shoulder/neck injuries with pain in each rated at 5-6 out of 10.

His medical treatment was likewise inconsistent with medical findings, regardless of accident. Petitioner underwent MRI exams of the left shoulder and cervical spine. MRI of the left shoulder revealed intact tendons and mild subacromial bursal fluid. This is consistent with Dr. Garelick's 6/25/24 examination, at which time he noted that left shoulder exam revealed a full range of motion, excellent rotator cuff strength, no pain in the AC joint, with negative NEER and HAWKINS tests. (RX 3). Even so, in December, 2024 Dr. Koutsky chose to provide an injection into the left shoulder.

The history of injury Petitioner provided to his treating doctors were likewise inconsistent. Petitioner testified to pain after working for 5-6 hours stocking shelves with a variety of different products. He did not testify to a specific injury. To Dr. Garelick, he alleged that he was repetitively lifting 10 lb. boxes. (PX 6). When he saw Dr. Murtaza, he alleged that he initially injured his left shoulder and neck while closing a trailer door, then later further aggravated this condition after working in a food pantry for a couple hours. (RX.7). However, to Dr. Koutsky Petitioner alleged that he felt a pulling sensation and pain while carrying a jug of tomato paste. (PX 3 at 2).

The nature of Petitioner's allegations are therefore unclear. He seems to testify to a repetitive injury. He gives what could be interpreted as such in his history to Dr. Garelick and Dr. Murtaza although the supporting facts given to each of these doctors is not consistent. However, he provides Dr. Koutsky with a history of specific injury to his neck and shoulder. Moreover, Petitioner's subjective

complaints are inconsistent. What started as a shoulder complaint became a complaint of neck pain without shoulder pain. It then became complaints of trapezius pain, then neck pain radiating to both arms.

Dr. Shadid examined Petitioner on behalf of Respondent, authoring 2 reports dated 8/26/24 and 10/3/24. Dr. Shadid concluded that Petitioner's subjective left shoulder and neck complaints were not supported by objective findings. Dr. Shadid further noted that examination did not support Petitioner's complaints of pain rated at 8 out of 10. Dr. Shadid also noted evidence of symptom magnification, specifically noting that there was no correlation between subjective complaints 8/10 and examination, no correlation between subjective complaints and diagnostic testing, and no correlation between mechanism of injury and complaints. (RX. 12, 13).

Petitioner's testimony and medical records allege both repetitive and acute injuries without substantive evidence that either occurred. There is no evidence that Petitioner's work over 5 or 6 hours on 1 day is sufficiently repetitive to cause an injury. In any event, an Application alleging such an injury was never filed. His symptoms changed rather significantly over time, and by Petitioner's testimony resolved after an injection into his left shoulder although MRI of the left shoulder showed no injury. Based on the foregoing, the Arbitrator finds that Petitioner did not sustain a work related accident involving his left shoulder and cervical spine on either 4/3/24 or 4/29/24.

CAUSAL CONNECTION

Petitioner alleges right hand injuries after an accident occurring on 4/3/24. He has now been recommended for a diagnostic arthroscopy by Dr. Wiesman. In support of this recommendation, Dr. Wiesman has diagnosed Petitioner only with pain in his right hand. Petitioner's testimony regarding his symptoms are inconsistent with the findings in his treating medical records. His testimony regarding diagnosis is contradicted by both Dr. Papierski and Dr. Birman who acted as Respondent's IME doctor. There are no objective findings or medical support for Dr. Wiesman's surgical recommendation. The Arbitrator having found that Petitioner did not sustain an accident involving his left shoulder and cervical

spine further finds that any alleged condition involving left shoulder and cervical spine is not causally related to his alleged accident on 4/3/24.

Petitioner testified that he forcefully struck his palm against a metal handle, complaining of both hand and wrist pain. (T.17). He did report both hand and wrist pain during his initial treatment on 4/11/24. (PX 6 at 503). He repeated his complaints of hand and wrist pain to Dr. Papierski on 5/29/24. (RX 2). As treatment progressed, Petitioner's complaints of pain changed. By 6/26/24, Petitioner's complaints were to the carpometacarpal joints 2, 3 and 4. (RX.4). Petitioner acknowledged that he was experiencing pain to the knuckles at the base of his fingers. (T.44, 45). He raised similar complaints to Dr. Papierski on 7/24/24, although now the impacted joints were primarily carpometacarpal joints 1 and 2. Dr. Papierski's diagnosis was of sprains to the carpometacarpal joints 1 and 2, being of the thumb and index finger. (RX.6).

When Petitioner returned to Dr. Papierski on 8/28/24, the doctor noted that Petitioner's complaints were mostly to the second carpometacarpal base of the index finger. (RX.8). Dr. Papierski reiterated on 9/25/24 that Petitioner's alleged symptoms now seemed to be rather localized to the second carpometacarpal base. (RX.9). By10/23/24, Dr. Papierski's diagnosis was of inflammation of the hand and wrist. (RX.11). It should be noted that Petitioner testified he never was given such a diagnosis. (T.40). While Petitioner's complaints to Dr. Papierski centered on the joints at the base of his fingers, when he was seen by Dr. Wiesman on 11/19/24 his complaints related primarily to his wrist. (RX.10).

Diagnostic testing does not explain Petitioner's complaints. X-rays were taken at Concentra on 4/10/24 of both Petitioner's right hand and wrist that were interpreted as normal. (PX6 at 508). MRI of the right wrist was completed on 5/2/24 with the resulting impression being of no TFCC tear, a sprain or tear of the scapholunate ligament without widening of the scapholunate interval or rotary subluxation of the lunate, and multiple bony contusions of the carpometacarpal articulations. (RX.15). MRI of the right hand completed on 10/7/24 provided the impression of persistent edema of the carpometacarpal

articulations. Tendons and ligaments were noted to be intact. (RX.14). Repeat x-rays taken by Dr. Wiesman on 12/19/24 confirmed that there was no widening of the scapholunate interval. (RX.17).

Dr. Papierski specifically addressed the MRI findings of the wrist in his note of 5/29/24. In response to Petitioner's documented concerns regarding the scapholunate ligament, Dr. Papierski pointed out that Petitioner had good carpal alignment, no instability of the scaphoid, and most importantly no tenderness over the scapholunate interval. (RX.2). Of some importance, Dr. Wiesman reviewed these same diagnostic tests. His review did not result in a different diagnosis. Dr. Wiesman's listed diagnosis is of "pain", which is not a diagnosis at all.

Moreover, when Petitioner was examined by Dr. Birman at the request of Respondent, Dr. Birman's findings are consistent with the findings of Dr. Papierski. Dr. Birman diagnosed Petitioner with carpometacarpal joint sprains. He acknowledged Petitioner's history of striking his palm against a metal bar, indicating that he could not reconcile an impact to his palm with complaints of pain and the finding of edema across multiple carpometacarpal joints. In noting that Petitioner did have objective findings to the top of his hand, Dr. Birman stated that he could not reconcile these findings with an initial impact injury to the palm. Specifically, Dr. Birman felt that the mechanism of injury could not explain Petitioner's complaints. Dr. Birman concluded that Petitioner's symptoms were better explained by a rheumatological condition unrelated to his work injury. (RX.16). Dr. Papierski and Dr. Birman appear to be reaching very similar conclusions. Both believe that Petitioner's condition is best explained by an inflammatory or rheumatological condition.

Based on the foregoing, the Arbitrator finds that Petitioner has failed to establish that his current condition of ill-being is causally related to the accident he has alleged. His testimony and the medical histories establish that impact was to the palm of his hand in line with his thumb. Diagnostic testing and many of his complaints especially to Dr. Papierski, however, involve the carpometacarpal joints at the base of his fingers. No evidence was presented by Petitioner to explain the discrepancy between the area of impact and these findings.

MEDICAL BILLS

The Arbitrator incorporates and restates his findings regarding Accident and Causation, above, into this section relating to medical bills. Based on the foregoing, medical bills through Dr. Papierski's final office visit on 10/23/24 are awarded. All other bills are denied. Respondent is given credit for medical bills payments represented by Respondent's exhibit 18.

TTD

The Arbitrator incorporates and restates his findings regarding Accident and Causation, above, into this section relating to temporary benefits. Respondent had a light duty program available for Petitioner. He alleged further injury to his left shoulder and cervical spine after a light duty assignment that he worked for 1 day. The Arbitrator has found that Petitioner did not sustain an Accident to his left shoulder or neck. Petitioner acknowledged that a second light duty offer was extended to Petitioner, but that he was unable to perform this further light duty job given the alleged condition of his left shoulder and cervical spine. As these conditions were not work related, the Arbitrator finds that Petitioner did not establish that he had entitlement to additional TTD benefits for lost time related to his neck and left shoulder complaints.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001318
Case Name	Warren Sisk v. Coalfield Repair Services, LLC.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0293
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 10/20/2026

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WARREN SISK,
Petitioner,

vs. NO: 24 WC 001318

COAL FIELD REPAIR SERVICES, LLC,
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 occupational disease, permanent disability, legal error, evidentiary error and Section 1(d) through Section 1(f) and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 15, 2025, is hereby affirmed and adopted.

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

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

The 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.

OCTOBER 20 2026

/s/ *Maria E. Portela*
Maria E. Portela

MEP/dmm
O:091026
49

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001318
Case Name	Warren Sisk v. Coalfield Repair Services, LLC.
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 12/15/2025

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 9 2025 3.58%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION5

WARREN SISK
Employee/Petitioner

Case # **24** WC **001318**

v.

Consolidated cases: _____

COAL FIELD REPAIR SERVICES, LLC
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie** , Arbitrator of the Commission, in the city of **Herrin**, on **October 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **November 8, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner's earnings were **$56,160.00** and the average weekly wage was $**1,080.00**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

Petitioner claims no medical.

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

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

ORDER

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease that arose out of and in the course of his employment or that his current condition of ill-being is causally related to an occupational exposure.

No benefits are awarded.

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

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

Bradley D. Gillespie
Signature of Arbitrator

DECEMBER 15 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WARREN SISK,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 24WC001318**
	)	
COALFIELD REPAIR SERVICES, LLC,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner testified that he worked underground in the coal mines for roughly 25 years. He was a buggy driver, roof bolter and miner operator. During the last 10 years of his coal mine employment, he was a mechanic. He testified that he ended his coal mining career about three years ago.

Petitioner testified that with any physical work he becomes really short of breath. He testified that at the time of arbitration, he was trying to build a fence, and he had to walk through the woods and up and down the hills. He testified that he would have to stop every now and then and use the little breather that he carries with him. Petitioner testified that he trains hunting dogs and he used to chase them all the time. He testified that he cannot do that anymore. He testified that when he has to drag a dog out of the woods on a lead it is pretty exhausting. He testified that he does not have the breath anymore like he used to. He just gets worn out easily. He testified that these conditions have come along more in recent years. He testified that he does not have the stamina to keep going like he used to. He testified that it seemed like it was getting worse all the time. He testified that it might just be because he is getting old. Petitioner testified that he has been using the inhaler which was prescribed by a physician for probably three years or so.

Petitioner testified that he started smoking when he was probably 16 years old and smoked for 10 or 15 years or maybe longer. He quit 30 or 35 years ago. When he smoked, he smoked a pack a day.

Petitioner owns 175 acres and has 40 head of cattle. He testified that working cattle sometimes gets to him. Petitioner testified that he has to get the cattle up a couple of times a year and wean the calves and give them shots. He testified that he has to call the cattle in from the field and into a runway and then sort them. He runs cattle through a head chute where he worms them and takes care of any doctoring that needs to be done. He testified that the last time he worked up the cattle he did it by himself and it took a long time. He testified that most of the time he gets some younger guys to help him.

Petitioner testified that his last day at Respondent was November 8, 2021. He suffered an injury to his right shoulder in August 2021 and went off work in November to receive treatment for same. He did not return to work after receiving treatment for his right shoulder. When he reached age 62, he took his retirement and Social Security.

Petitioner testified that he saw Dr. Istanbouly one time at the request of his attorney. He testified that Clayton Ford is his primary care provider, and he also sees Dr. Dave, a pulmonologist. He testified that he has always been honest with those doctors as to complaints that he did or did not have at the time.

Petitioner testified that while he was employed in the coal mine from time to time he underwent a chest x-ray by NIOSH. He testified that after he underwent the chest x-ray, NIOSH would send a letter with the results of his chest x-ray. He did not bring any of those letters with him to arbitration. Petitioner testified that due to his smoking history, he is eligible to undergo an annual CT of the chest. He testified that he does so on a regular basis. Same is performed through Dr. Dave's office.

Petitioner testified that for recreation he runs his dogs. His wife has an antique mall where he helps out. He testified that sometimes she buys a house with furniture. He testified that that the day prior to arbitration he had tried moving furniture. He testified that he cannot get things done like he used to.

Dr. Suhail Istanbouly is a physician who is board certified in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. (Petitioner's Exhibit 1, pp. 5, 7). Dr. Istanbouly practiced pulmonary and critical care medicine in Southern Illinois from 2003 to 2019. At that time, he relocated to Hines VA in the Chicago area but kept a satellite clinic in Southern Illinois where he comes once a month to see patients and perform black lung evaluations. (Petitioner's Exhibit 1, p. 6).

Dr. Istanbouly examined Petitioner at the request of Petitioner's counsel on May 14, 2024. Dr. Istanbouly testified that Petitioner had worked as a coal miner for 25 to 27 years. His last month of employment was August 2022. He worked as a mechanic during his last year of employment. Dr. Istanbouly testified that Petitioner had smoked 10 to 12 years in the past. Petitioner reported having persistent daily cough for the past few years which was mostly dry. Petitioner reported exertional dyspnea and that he would get short of breath by walking two blocks. Dr. Istanbouly testified that Petitioner had been seen in the past by pulmonologist, Dr. Dave, and was diagnosed with COPD. At the time Dr. Istanbouly saw Petitioner he was already using a long acting bronchodilator, Anoro. (Petitioner's Exhibit 1, p. 9).

Dr. Istanbouly testified that the spirometry test performed as part of his examination was within normal range per ATS Guidelines. He testified that the chest x-ray of December 6, 2023, revealed mild bilateral interstitial changes consistent with simple coal workers' pneumoconiosis. (Petitioner's Exhibit 1, pp. 9-10). Dr. Istanbouly testified that Petitioner's physical examination was within normal range. (Petitioner's Exhibit 1, p. 12).

Dr. Istanbouly testified that he diagnosed Petitioner with simple coal workers' pneumoconiosis, early stage, related to long term coal dust inhalation. He also diagnosed COPD which was a diagnosis Petitioner was being treated for prior to seeing Dr. Istanbouly. Based on the pulmonary function test, Dr. Istanbouly determined that Petitioner had GOLD Stage A or early stage COPD. (Petitioner's Exhibit 1, p. 12). Dr. Istanbouly testified that Petitioner's COPD was related to both long term coal dust inhalation and smoking in the past. (Petitioner's Exhibit 1, p. 14). Dr. Istanbouly noted in his report that it is advisable for Petitioner from a medical standpoint to avoid any further coal dust inhalation to prevent the progression of his pulmonary disease. (Petitioner's Exhibit 1, Deposition Exhibit 2).

Dr. Istanbouly testified he saw Petitioner one time at his attorney's request for a workup in his state black lung claim. He testified that for a time he performed five to seven such examinations each month but for the past few years, he was doing 10 to 15 cases a year. He testified that the number of referrals is down. (Petitioner's Exhibit 1, p. 15-16). Dr. Istanbouly testified that Petitioner related to him a significant smoking history. He testified that for COPD/emphysema according to the literature, one needs minimum 20-pack-year history of smoking. Petitioner smoked 10 to 12 years, so smoking would be the secondary factor in terms of his chronic respiratory symptoms. The main culprit would be coal dust. (Petitioner's Exhibit 1, p. 16). Petitioner reported to Dr. Istanbouly that his cough was triggered by talking loudly and screaming. Petitioner was not sure whether dust exposure was a trigger for his cough. Dr. Istanbouly testified that chronic cough can also be caused by reflux disease. He testified that the use of ACE inhibitors such as lisinopril can also cause a dry cough. (Petitioner's Exhibit 1, p. 16-17).

Petitioner related a history of exertional dyspnea. Dr. Istanbouly testified that there are causes for that other than respiratory disease. Two possible causes would be heart disease and deconditioning. Dr. Istanbouly was not sure what Petitioner had done to stay physically fit since leaving the coal mine. (Petitioner's Exhibit 1, p. 17). Dr. Istanbouly testified that Petitioner left the coal mine due to an arm injury. He did not relate to Dr. Istanbouly that he left the mine because of a respiratory problem. (Petitioner's Exhibit 1, pp. 17-18). Dr. Istanbouly did not review any treatment records regarding Petitioner other than the chest x-ray report of Dr. Smith, pulmonary function testing performed in his office and the oral history provided by Petitioner. (Petitioner's Exhibit 1, p. 18). Dr. Istanbouly testified that Petitioner's pulse ox of 94% was within normal range. Physical examination of his chest did not reveal any signs of respiratory disease. Dr. Istanbouly testified that the forced vital capacity of 112 percent of predicted made it less likely that he had underlying restrictive defect but to confirm restriction one needs to perform lung volumes. Dr. Istanbouly did not perform lung volumes on Petitioner. (Petitioner's Exhibit 1, p. 19). Dr. Istanbouly testified that the best FEV1/FVC ratio for Petitioner was 71%. He testified that the lower limit of normal for one in his mid-sixties would be 65%. (Petitioner's Exhibit 1, p. 20-21). Dr. Istanbouly testified that the pulmonary function testing that he performed on the date of his exam did not reveal an obstruction, but clinically, progressive exertional dyspnea with persistent daily cough and long history of coal dust inhalation and smoking would qualify Petitioner for COPD diagnosis, early stage. (Petitioner's Exhibit 1, p. 21).

Dr. Istanbouly testified that one must be a susceptible host to develop pneumoconiosis. He testified that not all coal miners develop pneumoconiosis. (Petitioner's Exhibit 1, pp. 21-22). Dr. Istanbouly testified that when he met with Petitioner, he provided him with a chest x-ray taken on December 6, 2023, and a B-reading of that film by Dr. Henry Smith. Dr. Istanbouly has not reviewed any other chest imaging or interpretation of chest imaging for Petitioner. Dr. Istanbouly is not an A- or B-reader of chest x-rays. He testified that when he reads a chest x-ray for the presence of pneumoconiosis, he does not provide profusion ratings on the films. He interprets the film as either positive or negative for black lung. If it is positive, he classifies what he sees as either early, moderate, or severe. He classified what he saw on Petitioner's chest x-ray as early pneumoconiosis. (Petitioner's Exhibit 1, pp. 22-23).

Dr. Henry K. Smith interpreted Petitioner's chest x-ray of December 6, 2023. He interpreted same as positive for simple coal workers' pneumoconiosis with p/p opacities in all zones of profusion 1/0. Dr. Smith is a board-certified radiologist and NIOSH B-reader. (Petitioner's Exhibit No. 2, pp. 1-2).

Dr. Cristopher Meyer reviewed a chest x-ray of Petitioner dated December 6, 2023, and a CT of the chest dated October 17, 2023. Dr. Meyer testified that the chest x-ray was quality 1. (Petitioner's Exhibit No, 1, pp. 42-43) He noted a calcified granuloma in the left upper zone. He testified that the upper portions of the lungs were hyperlucent which means that they were darker than they would normally be with bronchovascular crowding at the bases. He testified that this is frequently seen as a manifestation of emphysema because the emphysema expands the amount of air in the lung and pushes the normal vascular markings in the lungs more inferiorly. Dr. Meyer noted that there was plate atelectasis at the costophrenic angles, which is some linear areas where the lung sticks together. He testified that there were no radiographic findings of coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, pp. 43-44).

Dr. Meyer testified that the October 17, 2023, CT was of adequate diagnostic quality. He testified that although this was not a high-resolution CT, it was a better diagnostic tool than the PA chest x-ray. Dr. Meyer testified that the ability to separate out the overlying soft tissues of the chest wall from looking at the lung parenchyma makes CT scans better for evaluating the lungs in general than a standard chest interpretation. (Respondent's Exhibit No. 1, pp. 42-43). Dr. Meyer's impression of the CT scan was no findings of coal workers' pneumoconiosis. There was moderate centrilobular emphysema and there was an irregular nodule in the right upper zone that could be an early lung cancer. (Respondent's Exhibit No, 1, p. 45). Dr. Meyer testified that there is a strong correlation between the development of emphysema and tobacco use. He testified that his reading of the CT scan was concordant with the outside reading of the chest CT by Dr. Kevin Rice. (Respondent's Exhibit No. 1, p. 47).

Dr. Meyer testified that he generally prefers not to know anything about the individual when he is performing a B-reading. He testified that having a patient history with PFTs and blood gases might prejudice his reading. He testified that when he is asked to do B-reading, he assumes that the individual has adequate exposure history, and he is looking for a pneumoconiosis. He wants to interpret the film as objectively as possible (Respondent's Exhibit No. 1, pp. 53-54).

Dr. Meyer has been board certified in radiology since 1992. (Respondent's Exhibit No. 1, p. 8). Dr. Meyer became a B-reader in 1999. He testified that he was encouraged to take the B-reading examination by Dr. Jerome Wiot, a former chairman of the Department of Radiology at the University of Cincinnati and a member of the original committee responsible for designing the B-reader training and examination program. (Respondent's Exhibit No. 1, pp. 21-23). Dr. Meyer testified that there are several ways to study for the B-reader examination. NIOSH has posted online a course module that includes a syllabus with a series of images, and there is an intensive training weekend course hosted by the American College of Radiology. Dr. Meyer is currently co-director of the ACR B-reader course and as a member of the ACR Pneumoconiosis Task Force participated in developing the new syllabus and test materials provided to NIOSH in 2017. (Respondent's Exhibit No. 1, p. 33).

Dr. Meyer testified that the B-reading course was a weekend training course in which there were a series of lectures describing the B-reading classification system. The course participants would then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course are typically experienced senior level B-readers who have been involved in the process for quite some time. (Respondent's Exhibit No. 1, pp. 33-34). Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reader exam. He testified that the old certifying exam was six hours long with 120 chest x-rays to be

categorized. The pass rate for that examination ran roughly 60 percent. The current exam is 24 multiple choice questions and 72 cases in five hours. (Respondent's Exhibit No. 1, p. 35). Dr. Meyer testified that generally radiologists have about ten percent higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is. (Respondent's Exhibit No. 1, pp. 35-36). Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination from 1/0 which is an almost normal but slightly abnormal examination. Dr. Meyer testified that making the distinction between a film with 1/0 profusion versus a 0/1 profusion is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well. (Respondent's Exhibit No. 1, p. 36).

Dr. Meyer testified that the B-reader must first evaluate the quality of the film to describe any limitations of the x-ray. Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are small nodular opacities or any linear opacities and based on the size and appearance of the small opacities they are given a letter score. He testified it is important for a B-reader to show the small opacities and their distribution. (Respondent's Exhibit No. 1, p. 24). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described by small linear opacities. (Respondent's Exhibit No. 1, p. 30). The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. (Respondent's Exhibit No. 1, pp. 24-25). Dr. Meyer testified that profusion is basically trying to define the concentration of the small opacities in the lung. (Respondent's Exhibit No. 1, pp. 31-32).

Dr. Meyer testified that the gold standard for determining lung disease is the pathologic review of lung tissue rather than radiographic interpretation. (Respondent's Exhibit No. 1, pp. 52-53). Dr. Meyer testified that when he was reading films two days a week, he read between 150 to 200 chest x-rays in a week and depending upon the busyness of the service, he read 50 to 70 chest CT scans. (Respondent's Exhibit No. 1, pp. 16-17). Dr. Meyer testified that per month he performs approximately 50 to 100 B-readings and reads approximately 10 to 20 CT scans for the purpose of determining the presence, absence, or severity of occupational lung disease. (Respondent's Exhibit No. 1, p. 72).

Dr. Meyer testified that two equally qualified B-readers could look at a film and arrive at different conclusions. (Respondent's Exhibit No. 1, p. 54). He testified that one of the issues is making sure that the individual who is interpreting the examinations has ample experience reading them to be able to sort out what is the background variation in normal. He testified that people are as different on the outside as they are on the inside, and part of trying to figure out whether or not there is an additional abnormality in the lung is recognizing that large spectrum of normal, which is why someone like himself spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal. (Respondent's Exhibit No. 1, pp. 54-55). Dr. Meyer testified that CTs are the most sensitive exams which have the highest opportunity to identify abnormalities. (Respondent's Exhibit No. 1, pp. 56-57).

Dr. Meyer testified that all long-term coal miners are going to come out with some coal dust trapped in their lungs, however, the majority will not have changes in their lungs that qualify for coal workers' pneumoconiosis. He testified that the manifestations of pneumoconiosis are based on the body's ability to clear that dust. (Respondent's Exhibit No. 1, p. 59). Dr. Meyer testified that it is not possible to have coal workers' pneumoconiosis without having a tissue reaction to the coal dust. (Respondent's Exhibit No. 1, p. 61). Dr. Meyer agreed that there are studies that show that at autopsy as much as 50% of coal miners are found to have abnormalities of coal workers' pneumoconiosis when they might not have been apparent radiographically during their life. He testified that if he read an x-ray to be positive and the worker had a sufficient history of coal dust exposure, that would warrant a finding of coal workers' pneumoconiosis, but if he found it negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically. (Respondent's Exhibit No. 1, p. 94). Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases. (Respondent's Exhibit No. 1, p. 96).

Dr. David Rosenberg conducted a review of medical records and chest imaging regarding Petitioner at the request of Respondent's counsel. (Respondent's Exhibit 3, p. 11). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980. (Respondent's Exhibit 3, pp. 4-5). In 1995, he received his board certification in occupational medicine. (Respondent's Exhibit 3, p. 5). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and the American College of Chest Physicians. (Respondent's Exhibit 3, p. 7). Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease. (Respondent's Exhibit 3, p. 9). Dr. Rosenberg has patients in his clinical practice he is treating who have black lung. (Respondent's Exhibit 3, p. 10).

Dr. Rosenberg reviewed a chest x-ray of Petitioner dated December 6, 2023, taken at Southern Illinois Healthcare Center. He noted that the film was quality 1. The profusion was 0/0 for the presence of any parenchymal changes. Dr. Rosenberg testified that there were no findings of a pneumoconiosis. (Respondent's Exhibit 3, pp. 23-24). Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the quality of the film. He testified that the reader next evaluates whether there are any parenchymal changes. If they are present, he determines whether they are primary or secondary micronodular or linear changes. The reader next notes which of the lung zones are involved. The reader notes the profusion rating and whether there are any large opacities. (Respondent's Exhibit 3, pp. 24-25). Dr. Rosenberg testified that the reader then classifies any pleural abnormalities and notes on the B-reading form whether there are any other abnormalities. Dr. Rosenberg testified that the interpretation of the target film is done side-by-side with the standard ILO films. (Respondent's Exhibit 3, p. 25). Dr. Rosenberg testified that the profusion is the density of the parenchymal changes, so the greater the profusion, the greater the density of the findings one is recording. Dr. Rosenberg testified that profusion ratings are used to avoid such descriptive terms as early, mild, or severe disease. He testified that what early pneumoconiosis is to one person may not be the same as what it means to another person. He testified that any A- or B-reader would know what a 1/0 profusion means. (Respondent's Exhibit 3, p. 26).

Dr. Rosenberg testified that the difference between a film that has a 0/1 profusion and a film with a 1/0 profusion is the boundary between normal and abnormal. If it is 1/0 or higher, it is a positive x-ray. If it is below 1/0, even if it is 0/1, it is a negative x-ray. (Respondent's Exhibit 3, p. 26). Dr. Rosenberg testified that the interpretation of films at those lowest profusion levels are the most difficult interpretations to make. He testified that it is a fine distinction between a film that is positive and negative. (Respondent's Exhibit 3, pp. 26-27). He testified that this distinction is something that is taught in the B-reader course and is a point of emphasis in the testing to become a B-reader. He testified that one does not get that type of training anywhere except the B-reader course. (Respondent's Exhibit 3, p. 27).

Dr. Rosenberg testified that it is not likely for simple pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the position of the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible exposure levels until he reaches retirement age. (Respondent's Exhibit 3, p. 28).

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. It is a nonspecific complaint such as shortness of breath. He testified that to determine whether a person suffers from a pulmonary impairment, one would have to conduct various objective tests, such as pulmonary function tests, including lung volumes, diffusion capacity and spirometry. (Respondent's Exhibit 3, pp. 19-20). Dr. Rosenberg testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, Chapter 5, The Pulmonary System. He testified that chest imaging under the *Guides* is not a factor, let alone a key factor, in the assessment of pulmonary impairment. He testified that he agrees with the *Guides* that the correlation of chest x-ray interpretation and physiologic measurement is poor. (Respondent's Exhibit 3, p. 20). Dr. Rosenberg testified that one needs to be a susceptible host to develop coal workers' pneumoconiosis and that not all coal miners develop it. He testified that a majority do not develop coal workers' pneumoconiosis. Dr. Rosenberg testified that the intensity or duration of the exposure to coal dust does not have any importance in developing pneumoconiosis if that individual is not a susceptible host. (Respondent's Exhibit 3, p. 21).

Dr. Rosenberg testified that Petitioner's treatment records did not contain the diagnosis of chronic bronchitis. He testified that the history provided to Dr. Istanbouly by Petitioner of daily dry cough with no significant sputum production would not be consistent with the presence of chronic bronchitis. He testified that chronic bronchitis would be defined by chronic cough and sputum production for three months of the year for two consecutive years. He testified that this definition comes from the American Thoracic Society and the World Health Organization. (Respondent's Exhibit 3, p. 22).

Dr. Rosenberg testified that the spirometry performed on Petitioner was normal. It did not reveal an indication of restriction or evidence of obstruction. (Respondent's Exhibit 3, p. 22). Dr. Rosenberg testified that Petitioner had a reduced diffusion capacity. Dr. Rosenberg testified that same was due to Petitioner's significant smoking history rather than dust exposure based on Petitioner's chest CT scan which demonstrated diffuse emphysema. Dr. Rosenberg testified that an x-ray that has a profusion of 1/0 will not demonstrate findings of a decreased diffusion capacity. (Respondent's Exhibit 3, pp. 22-23). Dr. Rosenberg testified that from a pulmonary standpoint, Petitioner is capable of heavy manual labor. (Respondent's Exhibit 3, p. 23).

Dr. Rosenberg testified that Petitioner does not have findings of a pneumoconiosis on CT scan findings. He testified that CT scans are medically accepted diagnostic studies which are more

accurate than chest x-rays for determining the presence or absence of parenchymal changes of a pneumoconiosis. He testified that Petitioner does not have centrilobular micronodular changes with upper lobe predominance which characterizes parenchymal changes caused by past coal mine dust exposure. (Respondent's Exhibit 3, p. 29).

Medical records of Dr. Clayton Ford were admitted into evidence. Petitioner was seen by Dr. Ford on July 6, 2023, to establish care. He presented with past medical history of asthma. He had a history of working in the coal mines for 25 years and that he was being worked up for possible black lung. He was noted to be a former smoker of a pack and a half a day for 25 years giving him 37.5 pack-years, having quit said habit in 1998. His review of systems respiratory was negative for cough, shortness of breath, and wheeze. Examination of the chest revealed normal effort and breath sounds. (Respondent's Exhibit 4, pp. 32-37). Petitioner was seen on August 10, 2023, with complaint of right otalgia which started after his ear was irrigated to remove impacted cerumen. Medications this date were albuterol, multivitamin, and pramipexole. (Respondent's Exhibit 4, pp. 26-28).

Petitioner was seen on March 4, 2024, for follow up on asthma and yearly wellness visit. He reported increased cough for the last year which seemed to be triggered when he is talking. He also had coughing fits when eating. He was using Anoro inhalation daily for emphysema. He denied increased cough, wheezing or shortness of breath from baseline. Review of systems respiratory was negative for shortness of breath and wheezing. Examination of the chest revealed normal effort and breath sounds with no adventitious sounds. Assessment included centrilobular emphysema. (Respondent's Exhibit 4, pp. 13-20). Petitioner was seen on April 23, 2024, for follow up regarding his emphysema, nocturnal leg cramps and prediabetes. He reported that he suffered a COPD exacerbation recently and had several office visits to address same. He reported he was much less short of breath at this time and his cough was improving but not baseline yet. He was switched from Anoro to Trelegy and thought this was helping. Review of systems respiratory was negative for wheezing. Examination of the chest revealed decreased air movement without adventitious sounds. Assessment included centrilobular emphysema. (Respondent's Exhibit 4, pp. 2-8). Petitioner was seen on December 16, 2024, and he presented for evaluation of increased cough that had been present for over a year but was getting worse. He noticed he coughs more if eating or talking. He was using his albuterol inhaler as needed, usually two times daily on average. Review of systems respiratory was positive for cough. Physical examination revealed pulmonary effort to be normal and breath sounds were normal. Petitioner saw ENT in March and April 2024 and had evidence of irritation from laryngeal pharyngeal reflux on nasopharyngoscopy. A referral to gastroenterology was recommended for persistent reflux symptoms that are likely causing the ongoing cough. He was prescribed Breztri for centrilobular emphysema. (Respondent's Exhibit 6, pp. 2-7).

Petitioner was seen on February 6, 2025, with chief complaint of increased blood pressure. Review of systems respiratory was negative for cough and shortness of breath. On exam, pulmonary effort and breath sounds were normal. (Respondent's Exhibit 6, pp. 8-13). Petitioner was seen on March 6, 2025, for follow up regarding headaches and elevated blood pressure. He reported that he started on lisinopril on February 6, 2025, and developed a dry cough. He was switched to losartan. His cough has improved since stopping the lisinopril. Past medical history included asthma and black lung disease. Review of systems respiratory was negative for shortness of breath and wheezing. On pulmonary exam, he had normal pulmonary effort and breath sounds. (Respondent's Exhibit 6, pp. 15-19). Petitioner was seen on April 22, 2025, for follow up on

gastroesophageal reflux disease. Petitioner is experiencing a persistent dry cough, which he attributes to reflux affecting his vocal chords. He is using Breztri for breathing issues. He experiences occasional shortness of breath and wheezing, particularly with exertion but no significant change from his baseline. He has no productive cough. Review of systems respiratory was positive for cough and negative for shortness of breath. On examination, pulmonary effort was normal and he had normal breath sounds. Assessment: chronic cough likely due to laryngopharyngeal reflux. (Respondent's Exhibit 6, pp. 20-27).

Medical records of Dr. Chirag Dave were admitted into evidence. Petitioner was seen on April 14, 2023, for a low dose CT of the chest. The indication for same was shortness of breath and cough. In the history obtained it was noted that Petitioner had suffered from chronic cough for the past three to four months. He continued to have ongoing shortness of breath. He gave a history of having more than 30 pack-years of smoking, quitting 25 years ago. He worked in the coal mines for 25 years. He was started on Advair with some improvement. He was started on Trelegy, which helped the most, however, his insurance did not cover it. Review of systems respiratory was negative. Examination of the chest revealed decreased bilateral air entry with prolonged exhalation. There were no adventitious sounds. The impression was chronic obstructive pulmonary disease was a likely possibility although coal workers' pneumoconiosis could not be ruled out. Petitioner had abnormal CT scan of the chest. Same revealed 8 millimeter nodule. (Respondent's Exhibit 5, pp. 24-28). Petitioner was seen on May 12, 2023, for follow up visit regarding chronic obstructive pulmonary disease and abnormal CAT scan. Petitioner continued to have some cough and exertional shortness of breath. Examination of the chest revealed diminished breath sounds bilaterally with prolonged expiration. There were no adventitious sounds. Dr. Dave had available results from pulmonary function testing that he indicated was consistent with GOLD grade 1 mild chronic obstructive pulmonary disease. Petitioner was started on albuterol and Striverdi. (Respondent's Exhibit 5, pp. 20-22). Petitioner underwent CT of the chest on October 17, 2023. History for same was chronic dyspnea. The assessment was irregular nodule in the right upper lobe, ill-defined subpleural nodule anteriorly in the right upper lobe, old calcified granulomatous disease, and emphysema. (Respondent's Exhibit 5, pp. 14-15). Petitioner was seen on October 20, 2023, for COPD and lung nodule. Breathing remained well controlled except occasional worsening of shortness of breath with weather changes. Medications were Advair and pramipexole. Examination of the chest revealed diminished breath sounds bilaterally with prolonged expiration. There were no adventitious sounds. No pulmonary function test results were included. Impression was COPD which was stable on current management. (Respondent's Exhibit 5, pp. 11-13).

On April 22, 2024, Petitioner underwent CT of the chest with indication for same being pulmonary nodule follow up. The impression was stable pulmonary nodules and stable emphysema and calcified granulomatous changes. There were no new pulmonary findings. (Respondent's Exhibit 5, pp. 9-10). Petitioner was seen on May 3, 2024, in follow up for his COPD and CT of the chest. Petitioner's cough and phlegm were well controlled with use of Anoro. He was not using Trelegy or Advair. He needed albuterol three to five times a week. Examination of the chest revealed good air entry with no adventitious sounds. The doctor's assessment was GOLD grade 2 COPD. (Respondent's Exhibit 5, pp. 5-7).

Petitioner was seen on May 16, 2025. The reason for the visit was COPD and abnormal CT follow up. Morning cough was minimal and remained the only complaint. Medications included Advair and Trelegy Ellipta. On respiratory examination his breath sounds were diminished

bilaterally with prolonged expiration. Chest CT revealed stable lung nodules with no new nodules. Impression remained GOLD grade 2 COPD stable. (Respondent's Exhibit 7, pp. 2-5)

CONCLUSIONS OF LAW

Issue (c): Did an occupational disease occur that arose out of and in the course of Petitioner's employment with Respondent?

Issue (f): Is Petitioner's current condition of ill-being causally related to his occupational exposure?

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease arising out of and in the course of his employment or that his current condition of ill-being is causally related to an occupational exposure.

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

Drs. Smith, Istanbouly, Meyer and Rosenberg interpreted Petitioner's chest x-ray dated December 6, 2023. Dr. Rosenberg described the protocol for proper reading of a chest x-ray for pneumoconiosis. Dr. Rosenberg testified that profusion tells the reader whether the x-ray is positive or negative for pneumoconiosis. Dr. Istanbouly did not follow the protocol and did not know the profusion of the film that he reviewed. Dr. Meyer testified to the training and examination required to become a B-reader. Although one does not have to be an A- or B-reader to interpret films for the presence of coal workers' pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate, or severe. He classified what he saw on Petitioner's chest x-ray as early pneumoconiosis. Dr. Rosenberg testified that profusion ratings are used to avoid such descriptive terms as early, mild, or severe disease. He testified that what early pneumoconiosis is to one person may not be the same to another person. Based on the above, the Arbitrator gives no weight to Dr. Istanbouly's interpretation of Petitioner's December 6, 2023, chest x-ray.

Dr. Smith interpreted the chest x-ray of December 6, 2023, as positive for pneumoconiosis, profusion 1/0 with p/p opacities in all lung zones. Drs. Meyer and Roseberg interpreted the same chest x-ray as negative for pneumoconiosis. Dr. Meyer is not only a certified B-reader, but he served on the ACR Pneumoconiosis Task Force which completed a new syllabus for the B-reading course as well as the test that was delivered to NIOSH in 2017. Dr. Meyer is the co-director of the ACR B-Reader Course. Dr. Meyer is the most experienced radiologist in this case, reading 150 to 200 chest x-rays per week. As noted by Panel C of the Commission, Dr. Smith has testified that the panel which assembled the B-reading syllabus are the peers he aspires to be, and he acknowledged that Dr. Meyer was one of the authors of the syllabus. *Quinn v. The American Coal Company,* 20 IWCC 0326 (citing *Ferrell v. The American Coal Company*, 20 IWCC 0067). There is no evidence to counter Dr. Meyer's expertise. There is no testimony of Dr. Smith in the record. Based on the evidence in the record, the Arbitrator finds Drs. Meyer and Rosenberg to be the most credible B-readers in this case. See *Stewart v. The American Coal Company*, 21 IWCC 0337, *Brotherton v. Coal Field Construction*, 23 IWCC 0282 and *Hudgens v. The American Coal Company*, 23 IWCC 0528.

Dr. Meyer reviewed a CT scan of Petitioner's chest dated October 17, 2023. He noted no findings of coal workers' pneumoconiosis on the CT scan. He did note centrilobular emphysema

and testified that there was a strong correlation between the development of emphysema and tobacco use. He testified that CTs are the most sensitive exams which have the highest opportunities to identify abnormalities. Dr. Rosenberg testified that CT scans are more accurate than chest x-rays for determining the presence or absence of parenchymal changes of a pneumoconiosis.

Petitioner's medical history and pulmonary function testing do not support a diagnosis of coal workers' pneumoconiosis, or any other occupational lung disease causally related to his employment. Dr. Rosenberg testified that the spirometry performed on Petitioner was normal. It did not reveal an indication of restriction or evidence of obstruction. Dr. Rosenberg testified that Petitioner had a reduced diffusion capacity which was due to Petitioner's significant smoking history rather than dust exposure. Petitioner's primary care physician noted in April 2025 that Petitioner's chronic cough was likely due to laryngopharyngeal reflux.

The Arbitrator notes the testimony of Dr. Meyer that a negative chest x-ray would not rule out that Petitioner could have coal workers' pneumoconiosis pathologically. The Arbitrator finds that such testimony is not the same as saying that Petitioner in fact suffers from the disease. *Woolard v. The American Coal Company*, 21 IWCC 0154, p. 17. It is not Respondent's duty to produce evidence that Petitioner did not have coal workers' pneumoconiosis. Rather the issue is whether Petitioner has proven that he does. *Quinn v. The American Coal Company*, 20 IWCC 0326.

Dr. Istanbouly also diagnosed Petitioner with COPD related to both long term coal dust inhalation and smoking in the past. Dr. Rosenberg testified that Petitioner's spirometry was normal and did not reveal evidence of obstruction. Dr. Istanbouly agreed that Petitioner's pulmonary function testing performed as part of his examination did not reveal evidence of an obstruction.

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

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

The Arbitrator concludes that Petitioner failed to prove by preponderance of the evidence that he suffered a timely disablement as described in Sections 1(e) and (f) of the Occupational Diseases Act.

Section 1(e) of the Occupational Diseases Act states as follows:

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

Section 1(f) of the Act provides that said disablement must be present within two years after the last date of exposure to the hazards of an occupational disease. 820 ILCS 310/1(f).

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

In regard to an ability to earn full wages as a coal miner, Petitioner's employment with Respondent ended when he went off work for treatment of a right shoulder injury. During that time, Petitioner reached age 62 and took his retirement. Petitioner did not testify that his departure was related to any respiratory disease, impairment, or inability to perform his job duties. There was not evidence in the record that any physician ever restricted Petitioner from working as a result of an occupational lung disease. Dr. Rosenberg testified that from a respiratory standpoint, Petitioner was capable of heavy manual labor.

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

Petitioner's claim for benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013951
Case Name	Christopher Kozak v. Lockport Township Fire Protection District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0294
Number of Pages of Decision	59
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Alan Karpel
Respondent Attorney	Kisa Sthankiya

DATE FILED: 10/23/2026

/s/Kathryn Doerries, Commissioner
Signature

DISSENT

/s/Amylee Simonovich, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER KOZAK

Petitioner,

vs. NO: 23 WC 13951

LOCKPORT TOWNSHIP FIRE PROTECTION,

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, exposure, date of last exposure, notice, causation, temporary total disability, medical expenses, credit, nature and extent of disability, and evidentiary issues, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission views the credibility of the medical experts differently than the Arbitrator and finds Petitioner failed to prove by the preponderance of the evidence that the Petitioner's melanoma was causally related to his employment. The Commission further views the law regarding the admission of medical literature differently and modifies the Arbitrator's evidentiary ruling as discussed below. The Commission adopts the statement of facts contained in the Decision of the Arbitrator, which is attached hereto and made a part hereof, subject to the modifications and additions outlined below.

BACKGROUND

Petitioner brought this claim under the Occupational Diseases Act seeking compensation for melanoma on his scalp which Petitioner claims resulted from his career as a firefighter. After graduating from high school in 1993, Petitioner attended Joliet Junior College and earned an associate's degree in fire science. Petitioner began working as an on-call firefighter with the Mokena Fire Department in 1993 and two years later he was elevated to a part-time firefighter. In 1996, Petitioner obtained certification as a paramedic. Petitioner worked as a full-time firefighter

with the Mokena Fire Department for a short period of time and subsequently obtained employment as a firefighter and paramedic with Respondent in 1998.

In February of 2023, Petitioner was 48 years of age when he sought a medical consultation for a mole on his scalp. The mole was formally diagnosed as stage 2B melanoma. Petitioner underwent a wide local excision for removal of the cancerous lesion in March 2023. Petitioner then underwent immunotherapy and returned to full duty work as a firefighter with no restrictions in September 2023. Petitioner followed-up periodically and was found to be clear of the cancer. Petitioner's medical bills were all processed through his group health plan and he relied on his accumulated sick time for receipt of wages while off work for his cancer treatment. Petitioner has a family history for cancer, as his mother was diagnosed with colon cancer and his father was diagnosed with skin cancer. (T. 93-94) Per the medical records, Petitioner's father had a non-melanoma form of skin cancer. (PX3A)

Petitioner described his skin complexion on direct examination as somewhere in between fair and dark complected. (T. 92) Regarding his typical mode of dressing on sunny days, Petitioner testified it was his habit to wear shorts, a t-shirt, and "*probably* a ball cap." (Emphasis added.) (T. 92) Petitioner did not unequivocally say he always wore a cap on sunny days and he did not rule out sun exposure to the scalp of his head. On cross-examination, Petitioner testified he is Caucasian with blue eyes. (T. 152). Petitioner's outdoor activities included deer hunting between October and January and fishing during warmer weather months. (T. 153) Petitioner testified he typically went fishing a couple times a year. (T. 153) Petitioner testified he also went hiking outdoors but the frequency was less than once a month. (T. 154) In 2017, Petitioner purchased a home in Arizona. (T. 154-155) Petitioner testified he typically stayed in Arizona about 30 days a year and occasionally went hiking in Arizona. (T. 155) Petitioner testified he also went fishing and hunting in Arizona. (T. 155) Petitioner testified he wore sunblock when engaged in these activities but denied using sunblock for his scalp. (T. 155-156). On re-direct examination, Petitioner testified he typically wore a cap or hat while fishing, hunting or hiking, particularly during deer season since it is cold outside during those months. (T. 168-169) Petitioner did not, however, exclude sun exposure to his scalp on all occasions during outdoor activities.

Petitioner was unable to say how many fires he would generally respond to during a typical year. Petitioner estimated that approximately 80% of the calls he responded to were EMS-related and 20% of the calls were related to fires. (T. 126) Petitioner confirmed that overhaul is typically performed for structural fires but not all fires are structural fires. (T. 128) Petitioner further estimated that he responded to an average of 12 structural fires per year but the number of fires could have been less in some years. (T. 131-132) Petitioner agreed the number of structural fires could have varied between 0 and 12 structural fires in a year. (T. 132)

Chief John O'Connor testified that in 2024, the department responded to 11,500 calls. (T. 181) Approximately 80-85% of the calls were EMS. (T. 181) Less than 2% of the calls they responded to in 2024 were structural fires. (T. 187) He testified that the number of live structural fires varied. (T. 182) In 2024, the department responded to 20 structural fires and in 2023 they responded to 9 structural fires. (T. 182) Petitioner worked a 24/48 hour shift schedule, meaning he worked 24 hours on duty and 48 hours off duty, and therefore Petitioner was on duty approximately

30% of the year. (T. 184) Chief O'Connor testified it was safe to say that the Petitioner would not have attended every fire call received in a year given his schedule. (T. 186)

At trial, Petitioner did not provide any causation opinion testimony from any of his treating physicians. Petitioner's treating providers included Dr. Arico (dermatologist), Dr. Olson (Hematology/Oncology), Dr. Agrawal (ENT surgeon), and Dr. Gooi (ENT surgeon). Petitioner presented the opinion testimony of his Section 12 medical expert, Dr. Barbara Cochran. Respondent presented the opinion testimony of its Section 12 medical expert, Dr. Neel Shah. Both experts performed medical records reviews and relied on medical literature.

Dr. Barbara Cochran is board certified in internal medicine and described the practice of internal medicine as adult medicine for all ages from adolescence to the geriatric population, and the practice can include diagnostic medicine. (PX1 at 5-6) Dr. Cochran testified that physicians in this field are generally known as primary care doctors. *Id*. Dr. Cochran has no specialized education or training in dermatology, hematology, or oncology. Dr. Cochran described herself as an occupational medicine specialist but admitted she was never board certified for that specialty. Dr. Cochran described herself as board *eligible* but testified she has no plans to take the test. According to her curriculum vitae, Dr. Cochran earned her medical degree in 1974, completed a residency in internal medicine, and received fellowship training in psychiatry and pulmonary medicine. Dr. Cochran is licensed in Maryland and Florida. Dr. Cochran began practicing medicine at Sinai Hospital in 1976 and was an attending physician at the hospital through 2011, at which time she was named physician emeritus. Dr. Cochran also went into private practice commencing in 1978 and has practiced internal and diagnostic medicine through the present time. Dr. Cochran testified she treats patients for a variety of conditions, the most common of which are hypertension, diabetes, and heart disease. (PX1 at 7)

Dr. Cochran's curriculum vitae also contains a section describing her occupational medicine practice. Between 1990 and 2001, Dr. Cochran owned and operated a drug testing and occupational medicine services clinic. In 1994, she participated in a Respiratory Clearing Program for Amtrak in Maryland. Dr. Cochran also served as a medical director at an urgent care and occupational medicine clinic from 1996 to 1997. Dr. Cochran listed additional locations where she practiced occupational health, including Boling Air Force Base and "TSA" which we infer is a reference to the Transportation Security Administration. Since 2009, Dr. Cochran has served as a medical consultant for the Social Security Administration. Dr. Cochran also identified herself as an IME physician for "WC." Per her curriculum vitae, Dr. Cochran's IME services involve "permanency, causation, Subsequent Injury Fund, RADS/pulmonary exposures, Federal and private disability, Causation for Cancer in Firefighters, Personal injury, 2008 to present." (PX1, deposition Ex. #1) Dr. Cochran's curriculum vitae lists no publications or research studies. Between 2011 and 2017, Dr. Cochran gave ten presentations on a variety of medical conditions including repetitive trauma, biomarkers in cardiology, chronic regional pain syndrome, osteoarthritis, concussions, and traumatic brain injury. Between 2019 and 2023, Dr. Cochran gave five presentations regarding the topic of cancers among firefighters.

Dr. Cochran testified she has encountered patients with melanoma in her private practice; however, she refers those patient to a surgeon or dermatologist. (PX1 at 7-8) Dr. Cochran testified

that part of her work pertains to analyzing causation for various diseases contracted by firefighters including cancer. (PX1 at 10) This aspect of her work is limited to the "medical/legal setting." Dr. Cochran further testified, "I do that under basically workers compensation because I do workers compensation work as part of my occupational medicine practice." (PX1 at 10) Asked on direct examination to describe her "education and experience" as it relates to analyzing the causation of diseases contracted by firefighters, Dr. Cochran failed to describe in what way her education and experience factored into this area. Instead, Dr. Cochran testified that within the context of working in workers compensation she utilizes *guidelines* published by the American College of Occupational and Environmental Medicine. Dr. Cochran further testified that physicians can also use the Bradford Hill criteria, but explained that less and less people are using the Bradford Hill criteria since the American College published its guidelines. (PX1 at 10-11) Dr. Cochran commented "It's a four volume set. I have it sitting across from me." (PX1 at 11) Dr. Cochran also testified that her causation analyses are in large measure based on peer reviewed medical literature. (PX1 at 19-20) Dr. Cochran offered no testimony describing additional training in the areas of epidemiology, toxicology, or preventive medicine and public health. Since 2009, Dr. Cochran has also been performing disability evaluations for the Social Security Administration and evaluates about 60 cases a week. (PX1 at 14)

Dr. Cochran testified there are medical studies showing that firefighters face an increased incidence of developing melanoma as a result of their occupation. (PX1 at 29) Dr. Cochran testified she cited a number of studies in her written narrative report that addressed the risk for melanoma and commented, "I think there are four or five of them that I quoted in my original report." (PX1 at 29) Asked if there were any studies that were particularly persuasive, Dr. Cochran indicated there was one specific study, a meta-analysis by *Jalilian*, published in the International Journal of Cancer, February 8, 2019. (PX1 at 29-30) Dr. Cochran described a meta-analysis as a study that looks at multiple earlier studies and combines them for statistical analysis. (PX1 at 29-30) Dr. Cochran further testified that Petitioner was likely exposed to 24 different carcinogens as a result of his employment. (PX1 at 51) She based this opinion on other peer reviewed medical literature identifying the types of carcinogens present at fires. (PX1 at 52) Dr. Cochran testified that published medical studies formed the bases for her opinions. She agreed that these medical studies are regularly relied upon by those in her field regarding causation. (PX1 at 53-54) Dr. Cochran testified she reviewed about 50 to 60 published studies which she cited in her report. (PX1 at 54)

Regarding family history as a causal factor, Dr. Cochran testified that no specific gene has been identified as causative for melanoma. (PX1 at 56) Dr. Cochran concluded that Petitioner's family history has no relevance. (PX1 at 57) Based on a reasonable degree of medical certainty, Dr. Cochran opined that Petitioner's exposures to carcinogens at work led to the development of his melanoma. (PX1 at 58) Turning to the question of sun exposure, Dr. Cochran testified that ultraviolet radiation from the sun is a risk factor for melanoma. (PX1 at 58) Dr. Cochran testified that "people who work in the sun and take their shirts off and that kind of thing have a significant sun exposure" but that situation is not applicable in this matter. (PX1 at 58-59) Dr. Cochran further testified that people who have had a blistering sunburn can get a malignant melanoma; however, Petitioner does not have any history of a severe sunburn. (PX1at 59)

Dr. Cochran also reviewed the narrative report by Dr. Shah and prepared a rebuttal report. Dr. Cochran testified she disagreed with Dr. Shah's opinion that Petitioner's fair complexion may have been a cause of his melanoma. (PX1 at 62-63) Dr. Cochran noted that Dr. Shah had not examined Petitioner in person and skin complexion is a broad area with a wide range of complexions. (PX1 at 63) Dr. Cochran did not explain why she was in a better position to assess Petitioner's skin complexion since she never personally examined Petitioner. Dr. Cochran further noted there was no history suggesting Petitioner had significant UVA exposure or blistering sunburns. Dr. Cochran also disagreed with Dr. Shah's opinion that Petitioner's family history was a factor because there is no peer reviewed medical literature showing genes are associated with melanoma. Furthermore, Dr. Cochran did not believe Petitioner's father had melanoma based on Dr. Shah's statement that the father had a skin lesion removed from the nose. (PX1 at 63) Dr. Cochran testified that a part of the nose would have been removed had the lesion been diagnosed as melanoma. (PX1 at 63-64) The Commission notes that the medical records indicate Petitioner's father had a "non-melanoma" form of skin cancer. (PX3A at 1) Dr. Cochran also disagreed with Dr. Shah's statement that Petitioner's alcohol consumption and smoking history could have been a contributory factor. (PX1 at 64) Dr. Cochran testified that there is no peer reviewed medical literature to support that statement. Dr. Cochran also disagreed with Dr. Shah's reliance on an NIH study as evidence that genetic mutation can cause cancer without definitive causal origins. Dr. Cochran explained that the NIH study cited by Dr. Shah referenced the "Genetic and Rare Diseases Index" which found that many cancers are cancers thought to be inherent of random genetic mutations without definitive causal origins, and questioned the study's relevance as those cancers were rare and she does not consider melanoma to be rare. (PX1 at 64) Dr. Cochran further testified that while there are some genetic diseases where there is a mutation at birth, she relies on the mechanisms of carcinogenesis to which firefighters are exposed. (PX1 at 65)

On cross-examination, Dr. Cochran agreed she did not have any fellowship training in oncology or hematology. (PX1 at 72) Dr. Cochran confirmed she is not board certified in occupational medicine. (PX1 at 72) Dr. Cochran reiterated she is board *eligible* for occupational medicine but she never sat for the test. Dr. Cochran testified she is also board eligible in psychiatry and neurology but never sat for the exams. (PX1 at 72-73) Dr. Cochran testified she has no plans to sit for the exams, explaining "I am pretty old and I'm kind of done with taking tests." (PX1 at 73) Dr. Cochran agreed she has not personally run any studies in the field of oncology. (PX1 at 74) Dr. Cochran testified she can diagnose melanoma but does not treat the condition. (PX1 at 74) Dr. Cochran further testified she does not see very many patients anymore. (PX1 at 76) Most of her practice right now is doing disability evaluations for the Social Security Administration. (PX1 at 77) Dr. Cochran testified that legal/workers compensation matters is a small part of her practice. (PX1 at 76-77) Dr. Cochran testified she provides medical opinions in legal matters in Illinois, Pennsylvania, Virgina, Maryland, Texas, and she believes Arizona as well. (PX1 at 77) Regarding prior cases, Dr. Cochran testified she has provided opinions involving post-traumatic stress disorder and traumatic brain injury. (PX1 at 78-79) Dr. Cochran testified she has also provided medical opinions in cases involving the subjects of cardiology, orthopedics, and pulmonary conditions. (PX1 at 79)

Regarding her work in the case at bar, Dr. Cochran testified she did not personally examine Petitioner. Instead, she interviewed Petitioner and his wife on the phone. (PX1 at 87) Dr. Cochran

testified she reviewed medical records and documentation from the Fire Department regarding fire runs. (PX1 at 87-88) As to exposures from inside the fire station, Dr. Cochran testified she never visited the Lockport Fire Station, did not see photos of the station, and did not see any air quality testing records for the fire station. Dr. Cochran stated she had no knowledge as to whether any air quality testing was ever done for the fire station. (PX1 at 88-89) Dr. Cochran testified she did not review any SCBA test results. (PX1 at 89-90) Dr. Cochran agreed her causation opinion was based in part on the assumption that the fire trucks produce PHAs in the atmosphere inside the fire station. (PX1 at 106) Dr. Cochran agreed, however, that the Lockport Fire station was equipped with a Plymovent diesel exhaust system which is designed to remove diesel related carcinogens from the air inside the station. (PX1 at 107) Dr. Cochran testified that there would still be some exposure when the fire trucks are backing into the station since the Plymovent diesel exhaust system is not yet connected at that point. (PX1 at 106-107) The Commission notes that Petitioner testified that when a call comes in, the firefighters get into their protective personal gear inside the apparatus bay, after which the driver turns on the engine and opens the garage doors. (T. 57-58) According to Petitioner, the fire engines are running inside the apparatus bay for about 30 seconds to a minute, however long it takes to leave. (T. 59) Petitioner did not say how long the fire engines are running when the vehicles are backed into the garage upon their return to the fire station or how long it takes to re-connect the vehicles to the exhaust system. There is no evidence as to the duration or extent of exposure to PHAs when the vehicles are backed into the garage. Petitioner further testified the exhaust system is utilized during "rig checks" when the fire engines are turned on inside the apparatus bay. (T. 59)

As to the exposures while responding to fires, Dr. Cochran was unable to recall the number of structural fires that Petitioner encountered on an annual basis. (PX1 at 90) Dr. Cochran admitted she did not know the percentage of non-fire emergency calls versus the percentage of fire suppression calls in which Petitioner was involved. (PX1 at 90) Dr. Cochran testified she reviewed that information but was unable to recall. (PX1 at 90) Dr. Cochran testified she did not know how many fires Petitioner responded to over the course of a year. (PX1 at 105) Dr. Cochran was unable to say how many fires Petitioner had encountered during his career. (PX1 at 105) Dr. Cochran testified she did not know the percentage of fires involving residences compared to commercial properties. (PX1 at 106) She agreed that residences and commercial properties have different types of carcinogens. Dr. Cochran further testified she did not know the number of hours Petitioner spent performing overhaul after fires had been suppressed. (PX1 at 93) When asked about Petitioner's usage of his SCBA mask during overhaul, Dr. Cochran testified the firefighters remove their masks during overhaul and salvage. (PX1 at 90-91) Asked in follow-up if taking off the masks during overhaul was the old practice prior to 2010, Dr. Cochran replied, "No, that's not correct. It's the current practice." (PX1 at 91) Dr. Cochran's testimony regarding the current practice was inconsistent with Petitioner's testimony. According to Petitioner, all fire department vehicles are equipped with air monitors and approximately 10 to 15 years ago it became a required practice to continue wearing the masks until the air monitors indicated safe levels. (T. 45-47)

Dr. Cochran agreed Petitioner was a former smoker but did not believe that smoking can cause melanoma. Dr. Cochran commented she would need to look up that literature. (PX1 at 93) Dr. Cochran testified Petitioner had a remote prior history for smoking and it was her belief that the risk decreases if one is a former smoker. (PX1 at 93-94) Dr. Cochran was further questioned

regarding any connection between melanoma and consumption of alcohol. Dr. Cochran testified she did not have any opinion on that question as she had not reviewed the literature. Dr. Cochran acknowledged that Dr. Shah mentioned a connection in his report but did not cite any literature. (PX1 at 94-95) Dr. Cochran was then presented with a 2022 study concerning alcohol consumption and the risk of skin cancer. (PX1 at 98) Dr. Cochran testified she had never seen that study. (PX1 at 98)

Dr. Cochran further agreed that if Petitioner was blond-haired and blue-eyed then he could be presumed to possess a fair skin complexion. (PX1 at 99) Dr. Cochran agreed some of the literature she relied on came from the International Agency for Research on Cancer (IARC). (PX1 at 108) Dr. Cochran further agreed that the IARC has identified both tobacco and UV rays from the sun as carcinogens. (PX1 at 108)

Dr. Cochran testified she relied on several studies, and particularly a study referred to as the *Adetona* study, for the proposition that exposure to carcinogens produces oxidative stress and inflammation in the body which can result in cancer. (PX1 at 113) Dr. Cochran agreed, however, that the *Adetona* study did not specifically identify melanoma as a cancer associated with firefighting; rather, the study showed it "causes cancer in general." (PX1 at 113) Dr. Cochran further testified she relied on a meta-analysis referred to as the *Jalilian* study which showed an increased risk of cancer among firefighters and was one of nineteen articles which showed an increased risk and incidence of melanoma. (PX1 at 114) Dr. Cochran also relied on a study published in Lancet Oncology by the IARC. (PC1 at 122) Dr. Cochran described that study as a 724-page monograph which identified eight cancers for which firefighters are at risk with scientific certainty, and there were other cancers identified that have "other evidence" of risk but with less than scientific certainty. (PX1 at 123) Dr. Cochran agreed, however, that melanoma was not one of the eight cancers identified in the study. (PX1 at 123) Dr. Cochran explained the reason she cited to this study in Lancet Oncology was that it showed that firefighters have eight out of ten "mechanisms of cancer." (PX1 at 122-123) Nevertheless, Dr. Cochran agreed that the monograph did not support firefighting as a cause of melanoma. (PX1 at 123-124)

On re-direct examination, Dr. Cochran testified that Dr. Shah's estimated determination that Petitioner worked at active fire scenes approximately *ten hours per year* over his 23-year career, if accurate, would not change her opinion. (PX1 at 124-126) Dr. Cochran agreed that published studies cited as *Jalilian, Pukkala* (Nordic study), *Glass* (Australian), and the *Tsai* study (California) were all consistent with each other and showed an increased risk of melanoma in firefighters. (PX1 at 127)

Respondent's Section 12 physician, Dr. Neel Shah, has three board certifications in internal medicine, hematology, and oncology. (RX3 at 6) Dr. Shah received fellowship training at Rush University Medical Center and practices in northwest Indiana. Dr. Shah treats oncology patients and provides non-surgical care. (RX3 at 7) Dr. Shah testified he is a cancer specialist and works with a multi-disciplinary team which includes a dermatologist and a radiation oncologist. (RX3 at 8) Dr. Shah is also a professor of medicine at Indiana University where he teaches medical students. He has hospital privileges with Franciscan Health System and Powers Health System. (RX3 at 7) Dr. Shah testified he sees about 100 patients each week and does not perform any IMEs. (RX3 at 9-10) Dr. Shah testified he will, however, perform records reviews about once

every month or two. (RX3 at10) Dr. Shah testified he performs records reviews for both plaintiff and defense. Per his curriculum vitae, Dr. Shah has authored many articles including one article on the topic of melanoma published in 2018. (RX3 at 9) Dr. Shah testified he has personally treated firefighters in his practice and has an understanding of the occupational exposures faced by firefighters. (RX3 at 15)

On the issue of causation, Dr. Shah testified there are known risk factors for melanoma including a family history of skin cancer, fair skin complexion, and alcohol use. (RX3 at 17) Dr. Shah testified that all these factors increase your risk of getting invasive melanoma. Dr. Shah further testified that firefighting *has not* been proven to increase that risk. (RX3 at 16-17) Dr. Shah opined that Petitioner's melanoma was not causally related to his occupation. (RX3 at 17) Dr. Shah explained that Petitioner's cancer was associated with his fair complexion, family history of skin cancer, and alcohol use, all of which are known risk factors proven in scientific studies. (RX3 at 17) Dr. Shah further testified there is scientific data that supports his opinion. (RX3 at 17)

Dr. Shah testified the scientific data fails to show a causal link between firefighting and melanoma. (RX3 at 17-18) Dr. Shah testified he reviewed "approximately 16 or maybe more, about 21 articles" looking at the relationship between firefighting and melanoma and there was no data that showed an increased occupational risk of exposure for melanoma. (RX3 at 17-18) Dr. Shah noted there was a study of nearly 30,000 firefighters from San Francisco, Chicago, and Philadelphia which did not show that invasive melanoma was increased by their occupation. (RX3 at 18) Dr. Shah further testified many cancers are caused by a random mutation. (RX3 at 18) Dr. Shah explained the reason for that is presently unknown but more than 66% of all cancers in general are probably not preventable because they occur due to random mutation. (RX3 at 18) Dr. Shah testified there was a study by Vogelstein published in Science in March, 2017, which demonstrated the randomness of cancer. (RX3 at 18)

Dr. Shah further testified to reviewing Dr. Cochran's rebuttal report and authoring a second report in response. (RX3 at 31) Dr. Shah testified his opinions did not change and he emphasized the non-occupational risk factors for developing melanoma. Dr. Shah reiterated that genetic susceptibility, family history, phenotypic traits such as fair skin, intermittent sun exposure with UV radiation are all key risk factors. (RX3 at 32) Dr. Shah testified that firefighting does not increase those risk factors. Dr. Shah highlighted the basis for his disagreement with Dr. Cochran. Dr. Shah testified that Dr. Cochran's causation analysis viewed cancer as a "single entity" when there's over 200 different types of cancer, each of which may possess different risk factors. (RX3 at 32-33) Dr. Shah further testified there existed epidemiological inconsistencies on this topic. (RX3 at 33) Dr. Shah testified he cited to a couple of articles in his report that show an elevated risk of cancer among firefighters but no direct causal link with melanoma. Dr. Shah also testified there is no "dose response" relationship to show an increase in exposure to smoke translates into an increase in melanoma among firefighters. Dr. Shah noted a 2023 study looking at firefighters in Sweden showed no increase in melanoma among Swedish firefighters. (RX3 at 33-34) Dr. Shah also noted the *Pukkala* study published in 2024 yielded inconsistent risks for melanoma and nothing to show a direct causal link. (RX3 at 34) Dr. Shah opined "there's absolutely no evidence that this

occupational exposure leads to melanoma." Dr. Shah further commented that the chemical exposures from firefighting, such as benzene for example, are not known to induce melanoma's specific mutagenesis or transformation in skin cells to melanoma. (RX3 at 34)

On cross-examination, Dr. Shah agreed he has not authored any published work on the causes of melanoma. (RX3 at 43) He authored an article concerning the treatment of melanoma. Dr. Shah agreed he has not participated in any epidemiological studies in his career. (RX3 at 44) He is not trained in occupational medicine and he is not an epidemiologist. (RX3 at 44-45) Regarding his expertise as it relates to firefighters, Dr. Shah testified he has treated firefighters in his practice, and stated, "I've done research in melanoma and reviewed the data of the articles." (RX3 at 45) Dr. Shah agreed he relied on epidemiological studies in reaching his opinions in this case. (RX3 at 48) Dr. Shah testified he believed he reviewed over 30 studies which he cited in his report. (RX3 at 48) Dr. Shah testified he read the published studies cited by Dr. Cochran. (RX3 at 58) Dr. Shah testified that several studies cited by Dr. Cochran have explored the risk of cancer among firefighters; however, many of the studies related to cancers in general. (RX3 at 58) Dr. Shah further testified there are over 200 different types of cancer, all of which are very different and have different risk factors. (RX3 at 58) He also noted epidemiological inconsistencies in the studies. Dr. Shah further noted the literature showed an elevated cancer risk in firefighters, but showed no direct link to melanoma. (RX3 at 58-59) Dr. Shah explained that the cancer research findings do show a well-documented association between firefighting with some cancers, namely leukemia and different types of lung cancer including mesothelioma, but the evidence for melanoma is inconclusive. (RX3 at 60) In his opinion there is no causal pathway between firefighting and melanoma. (RX3 at 60)

Dr. Shah reiterated that Petitioner's fair skin complexion, family history of cancer, and alcohol consumption all increased the risk of melanoma. (RX3 at 68) Regarding the family history, Dr. Shah agreed he relied on a March 28, 2023 treatment visit note which described Petitioner's father as having a history of non-melanoma skin cancer. (RX3 at 86) Dr. Shah agreed there is no documented family history specific to melanoma, and he further agreed that one of the studies he cited refers to a family history of melanoma rather than non-melanoma skin cancer. (RX3 at 88) Nevertheless, referring to information from the American Cancer Society, Dr. Shah explained the risk for melanoma is still present with a family history for non-melanoma skin cancer but the risk increases even higher with a family history of melanoma. (RX3 at 89-90) Thus, a family history of non-melanoma skin cancer is a risk factor for melanoma. (RX3 at 91) Dr. Shah further commented that cancer can run in families as many cancers have a genetic association. (RX3 at 92)

Dr. Shah agreed there was additional information from the American Cancer Society website showing that chemicals called polychlorinated biphenyls (PCBs), found in some old electrical equipment, are known to increase the risk of melanoma; however, Dr. Shah further noted that the article says the evidence is limited. (RX3 at 95-96) Dr. Shah further testified there are studies showing firefighters have an increased risk for lung cancer, bladder cancer, and leukemia, but he reiterated there is insufficient evidence to causally link melanoma to firefighting. (RX3 at 105) Dr. Shah testified his opinion would remain unchanged regardless of the number of hours

Petitioner spent fighting fires, whether it be 10 hours or 100 hours a year. (RX3 at 107) Dr. Shah testified his opinion is based on "the current data that we have." (RX3 at 107-108)

On redirect examination, Dr. Shah agreed that both he and Dr. Cochran both cited the *Pukkala* study, also referred to as the Nordic study. (RX3 at 123) Dr. Shah testified the *Pukkala* study *does not* support a causal link between firefighting and melanoma. (RX3 at 124)

On re-cross examination, Dr. Shah confirmed that based on his review, the *Pukkala* study refuted any association between firefighting and melanoma. (RX3 at 126) Dr. Shah clarified that the amount of time spent firefighting did not impact his opinion because currently the facts don't suggest that being a firefighter increases the risk specifically for melanoma. (RX3 at 126)

EVIDENTIARY ISSUES

I. Frye objection

During the hearing below, Respondent made a *Frye* objection challenging the opinions of Dr. Cochran. (T. 232-233) The Arbitrator's decision does not reflect a ruling on the objection. Where the Arbitrator fails to expressly rule on an evidentiary objection, it may be considered overruled to the extent that the Arbitrator relied upon the testimony. See *Crowder vs. Cedarhurst of Collinsville*, 24 IWCC 0056, 2024 Ill. Wrk. Comp. LEXIS 59. On review, Respondent does not specifically reference the *Frye* standard in its Statement of Exceptions and Supporting Brief but broadly argues that the Arbitrator erred in relying on epidemiological data as scientific evidence of causation. Respondent further argues that evidence showing an association or correlation rather than causation cannot be used for causation purposes. As such, the Commission considers the issue.

In Illinois, the admission of scientific evidence is governed by the *Frye* standard. See *In re Commitment of Simons*, 213 Ill. 2d. 523, 821 N.E.2d 1184 (2004) citing *Frye vs. United States*, 293 F. 1013 (1923). See also *Durbin vs. Illinois Workers' Compensation Comm'n,* 2016 IL App (4th) 150088WC, P33. The *Frye* test does not concern an expert's qualifications to serve as an expert. Rather, the *Frye* test is applicable where an expert's opinions are challenged on the grounds the opinions were formulated using "new" or "novel" scientific methods, principles or techniques which are not sufficiently established to have gained general acceptance in the particular field to which it belongs. *Durbin,* supra, at P33. The *Frye* test was later codified in the Illinois Rules of Evidence where Rule 702 provides in pertinent part:

> Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs. Ill. R. Evid. 702 (eff. Jan. 1, 2011).

Because scientific evidence generally carries with it a perceived heightened degree of reliability, the *Frye* standard exists "to exclude methods new to science that undeservedly create a perception of certainty when the basis for the evidence or opinion is actually invalid." *Donaldson vs. Central Illinois Public Service Co*., 199 Ill. 2d. 63, 78, 767 N.E.2d 314 (2002), *abrogated in part on other grounds by In re Commitment of Simons*, 213 Ill. 2d. 523, supra. See also *Durbin,* supra. at P33. If the novel scientific methodology or principle has gained general acceptance in the particular field to which it belongs, then the evidence is presumed reliable and will be deemed admissible under *Frye*. *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 196, 857 N.E.2d 766 (2006). The Supreme Court has noted that a scientific methodology is considered "new" or "novel" if it is original or striking or does not resemble something formerly known or used. *In re Commitment of Simons*, 213 Ill. 2d. at 530. If the underlying method used to generate an expert's opinion is reasonably relied upon by the experts in the field, the fact finder may consider the opinion. *Id.*at 529-530.

The *Frye* test is applicable in workers compensation cases. See *Bernardoni vs. Industrial Comm'n,* 362 Ill. App. 3d 582, 840 N.E. 2d 300 (2005). In the civil court system, the trial judge ordinarily conducts a separate *Frye* hearing prior to trial. In *Bernardoni,* the Court observed that separate *Frye* hearings would be impracticable for the workers compensation system given the general nature of workers' compensation proceedings and the prevalence of expert testimony obtained in advance via evidence depositions. *Bernardoni*, 363 Ill. App. 3d at 594. The Court thus approved of the Commission's procedure whereby the arbitrator in the first instance and the Commission on review rule on *Frye* objections after reviewing all the expert deposition testimony and evidence relevant to the *Frye* issue.

The Illinois Supreme Court declared that the appellate standard of review for *Frye* rulings shall be *de novo* review, and the reviewing court may rely on materials outside the trial record. "In conducting such *de novo* review, the reviewing court may consider not only the trial court record but also, where appropriate, sources outside the record, *including legal and scientific articles,* as *well as court opinions from other jurisdictions*." (Emphasis added.) See *In re Commitment of Simons*, 213 Ill. 2d 523, 531, 821 N.E. 2d 1184 (2004). The Court further indicated that concerns with the hearsay nature of such evidence are not implicated in the context of a *Frye* hearing because the focus is primarily on counting scientists' votes rather than on verifying the soundness of a scientific conclusion or the expert's credibility. *Simons*, 213 Ill. 2d at 532.

In the instant case, the Commission finds no basis to exclude Dr. Cochran's opinions based on the *Frye* test. Dr. Cochran relied on epidemiological studies addressing the incidence of cancers among firefighters and in so doing she testified that she utilized a six-step causation method taken from guidelines established by the American College of Occupational and Environmental Medicine (ACOEM). (PX1 at 20-27) Dr. Cochran further testified the ACOEM guidelines were based on earlier guidelines proposed by the National Institute for Occupational Safety and Health (NIOSH), a federal agency. (PX1 at 27) Dr. Cochran further testified that one of the steps or prongs involves epidemiolocal studies. (PX1 at 27-28) She testified that these medical studies are regularly relied upon by those in her field regarding causation. (PX1 at 53-54) The Commission finds that reliance on epidemiological studies is not new or novel within the meaning of the *Frye* standard. The field of epidemiology was described by one expert as "the field of public health and medicine that studies the incidence, distribution, and etiology of disease in human populations."

See *Donaldson vs. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 94, 767 N.E.2d 314 (2002), *abrogated in part on other grounds by In re Commitment of Simons*, 213 Ill. 2d. 523, supra. In the State of New York, also a *Frye* State, an appellate court noted the following:

> Epidemiology itself is certainly not novel. It is defined as "(1) a branch of medical science that deals with the incidence, distribution, and control of disease in a population; [or] (2) the sum of the factors controlling the presence or absence of a disease or pathogen" (Merriam Webster's Collegiate Dictionary 389 [11th ed [2003]). It is a science which "focuses on the question of general causation (i.e., is the [landfill] capable of causing disease?) rather than that of specific causation (i.e., did [the landfill] cause disease in a particular individual?)" (Federal Judicial Center, Reference Manual on Scientific Evidence, Reference Guide on Epidemiology, at 336 [2d ed 2000]). Epidemiological studies, such as those conducted by the City and plaintiffs, are similarly not novel. In addition, numerous courts have held that this field of science is "'the primary generally accepted methodology for demonstrating a causal relation between a chemical compound and a set of symptoms or a disease.'" *Nonnon vs. City of New York*, 32 A.D.3d 91, 104, 819 N.Y.S.2d 705 (2006).

Respondent's other argument that evidence of correlation or association is improper is likewise without merit. This argument was addressed by the Appellate Court in *Molitor vs. BNSF Ry. Co.*, 2022 IL App (1st) 211486, where a railroad employee alleged his cancer was causally related to his employment:

> we do not believe that the causation opinions expressed by Dr. Chiodo are made subject to *Frye* merely by the fact that the two articles cited by him do not definitively state that diesel exhaust or herbicides cause non-Hodgkin's lymphoma. * * * The appellate court has previously rejected arguments to exclude causation testimony under *Frye* based on scientific articles recognizing only an "association" or "increased risk" between a thing and an injury without using the word "cause." *Molitor vs. BNSF Ry. Co.*, 2022 IL App (1st) 211486, 214 N.E.3d 324, P72, citing *Northern Trust Co. vs. Burandt & Armbrust, LLP*, 403 Ill. App. 3d 260, 277, 933 N.E.2d 432 (2010).

The Commission further notes that Dr. Shah testified that he too relied on epidemiological studies in reaching his opinions in this case. (RX3 at 48) Accordingly, the Commission finds it permissible to admit into evidence Dr. Cochran's opinion testimony on this subject. The Commission notes, however, that scientific evidence which passes the *Frye* test for admissibility does not mean the evidence will ultimately be found credible and persuasive. The *Frye* test goes only to the admissibility of the evidence, not to the weight of the evidence. The *Frye* test "does not replace the role of the advocate, who may expose shaky but admissible evidence by vigorous cross-examination or the presentation of contrary evidence." *Donaldson*, 199 Ill. 2d at 88.

II. Medical literature and appendices summarizing the medical literature

During the deposition of Dr. Cochran, Petitioner offered into evidence the doctor's narrative report along with appendices attached to the report. The appendices consisted of Dr. Cochran's summaries of the medical literature she reviewed. The actual medical studies described in the appendices were not attached as exhibits and were not offered into evidence at that time. Petitioner also offered into evidence the doctor's rebuttal report marked as deposition exhibit #3 which also included attached appendices. Respondent objected to the admission of the doctor's reports on two separate grounds, *Ghere* and hearsay. (PX1 at 69) As to the latter, Respondent further asserted, "[h]er testimony today is all the Commission should be able to review." (PX1 at 69).

At trial, Petitioner offered Dr. Cochran's deposition transcript into evidence as PX1. Attached to the deposition transcript were the narrative reports and appendices. Petitioner also offered into evidence as separate exhibits the doctor's report and rebuttal report marked as PX6 and PX7, along with the appendices. Additionally, the Petitioner offered into evidence copies of the medical studies and articles cited by Dr. Cochran and which corresponded to the doctor's summaries set forth in her appendices. (T. 249) Respondent objected to Dr. Cochran's reports and appendices as attachments to the deposition transcript based on hearsay. (T. 235) Respondent also objected to the admission of the narrative report and appendices as separate exhibits based on hearsay. (T. 251) Respondent further objected to the admission of the medical literature based on hearsay. (T. 252, 256) Petitioner argued he was not offering the documentation as substantive evidence; rather, it was his intention to "have the trier of fact, your honor, the Commission, look at these to determine the weight and credibility to be given to each expert in this case." (T. 250) In support thereof, Petitioner cited to an Illinois Supreme Court decision, *People vs. Anderson*. (T. 250, 266)

The Arbitrator admitted into evidence Dr. Cochran's report and rebuttal report. (T. 267) As for the appendices and medical studies, the Arbitrator took the matter under advisement. In his Decision, the Arbitrator ruled as follows:

> The Arbitrator notes that the actual studies relied upon by both doctors were admitted into evidence over objection. The Arbitrator concedes that he lacks the expertise to review these studies with any independent scientific understanding. That being said, the only way to determine which expert in a case like this carries more weight in their diametrically opposed opinions is, in part, to determine the reasonableness of their reliance on evidence supporting their conclusions, which the Arbitrator believes is supported by Supreme Court Rule 703. As noted at hearing in the discussion of the admission of these documents, the Arbitrator stated he would not rely on these studies and literature in making accident and causation findings. The Arbitrator has, however, reviewed the introduction and abstract portions of the studies to try to determine if the experts' reliance on them or disputes with them was reasonable. (Emphasis added.) (Arbitration Decision at 19)

Based on Respondent's objections as described above, the Commission finds that Respondent properly preserved its objections for review. The Commission further finds, despite Petitioner's proposed legal rationale for the admission of the medical literature, that the medical studies and literature were in effect offered for the truth of the matter asserted and thus constituted hearsay. Ill. R. Evid. 801(c) (effective Jan. 1, 2011). Hearsay evidence is an out-of-court statement offered to establish the truth of the matter asserted therein, and resting for its value upon the credibility of the out-of-court asserter. *People vs. Carpenter*, 28 Ill. 2d 116, 121, 190 N.E.2d 738 (1963), citing McCormick, Law of Evidence, sec. 225, and Cleary, Handbook of Illinois Evidence, sec. 31.1 *et seq.*)

As a preliminary matter, because there is some overlap involving the use of medical literature for purposes of making a *Frye* determination, we first address the distinction between the proper use of hearsay evidence for purposes of a *Frye* determination and the improper use of hearsay evidence when adjudicating the merits of a claim. As mentioned, the Arbitrator did not expressly rule on Respondent's *Frye* objection. To the extent the Arbitrator may have considered the issue, the Arbitrator would have been permitted to consider hearsay evidence, including the contents of the medical literature, for purposes of determining whether the expert's scientific methodology was new or novel, and if so, whether the methodology or principle is generally accepted. However, the Commission finds that when a *Frye* determination is made in favor of admitting an expert's opinion testimony, that same hearsay evidence cannot be used a second time for determining the merits of the claim unless the out-of-court statement is offered for some purpose other than the truth of the matter asserted (non-hearsay) or falls under an exception to the rule against hearsay. This conclusion is based on the rationale underpinning the use of hearsay evidence for *Frye* determinations. Compare, *People vs. Magee*, 374 Ill. App. 3d 1024, 872 N.E.2d 63 (2007). In *Magee*, the Appellate Court addressed the prosecution's motion to strike portions of the defendant's brief which relied on scientific studies to attack the reliability of victim identification but which had not been presented at trial. The defendant cited *In re Commitment of Simons* for support of its reliance on the scientific studies. The *Magee* Court rejected the argument:

> Defendant's broad application of the In re Commitment of Simons language is both misleading and inaccurate. The issue before the supreme court in *In re Commitment of Simons* was whether a reviewing court should conduct *de novo* review of a lower court's Frye analysis, and, in so doing, rely upon materials outside the trial record. *In re Commitment of Simons*, 213 Ill.2d at 530-31. The supreme court concluded that *de novo* review was appropriate in that context because "the trial court is not asked to determine the validity of a particular scientific technique," but instead must determine whether a general consensus existed in the scientific community regarding the reliability of the particular technique at issue. *In re Commitment of Simons*, 213 Ill.2d at 532. ***In that pursuit, relying on materials outside the trial record is not problematic because issues of witness credibility and hearsay do not exist.*** *In re Commitment of Simons*, 213 Ill.2d at 532, citing *People v. Miller*, 173 Ill. 2d 167, 205, 670 N.E.2d 721, 219 Ill. Dec. 43 (1996)
>
> The case at bar is completely distinguishable. Primarily, no Frye analysis was conducted at trial. ***More important still, defendant does not merely rely on the***

> ***scientific evidence to demonstrate a general acceptance for a particular technique; rather, he submits the articles for their substance and ultimate findings***. Therefore, there is an existing concern regarding hearsay, in that the author cannot be observed or cross-examined. (Emphasis added.) *People vs. Magee*, 374 Ill. App. 3d at 1030.

Accordingly, while hearsay evidence in the form of medical literature may be considered for purposes of a *Frye* determination, that same evidence cannot be used as substantive evidence in contravention of the hearsay rule when adjudicating the merits of the claim. As the Court in *Molitor* stated, "We reiterate that it is not part of the *Frye* test for a trial court to examine the 'reliability' or 'validity' of the underlying data on which an expert's opinion is based." *Molitor vs. BNSF Ry. Co.*, 2022 IL App (1st) 211486, P52.

Turning to Respondent's objections regarding the medical literature and appendices, it is settled law that an expert may cite to medical literature to explain the basis for an opinion; however, the contents of medical literature cannot be used as substantive evidence to bolster the opinions of an expert during direct examination. The Commission relies on the Appellate Court's decision in *Mielke vs. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 54, 463 N.E.2d 216 (1984), where the Appellate Court held that expert witnesses are <u>not</u> permitted to summarize the findings from medical literature. "An expert witness may always state the basis for his opinion; however, admission of authoritative treatises are [*sic*] only for the purpose of impeaching that expert. The rule prohibiting introduction of medical treatises as substantive evidence is one of long-standing." *Id.* at 54, quoting *Fornoff vs. Parke Davis & Co.*, 105 Ill. App. 3d 681, 434 N.E.2d 793 (1982). See also, *Schuchman vs. Stackable*, 198 Ill. App. 3d 209, 230, 555 N.E.2d 1012 (1990), holding that "[i]f an expert witness may not summarize the findings of articles, it follows logically that an expert witness may not read from such articles."

On the other hand, the contents of medical literature may be used during cross-examination of an expert. See *Toppel vs. Redondo*, 247 Ill. App. 3d 211, 214, 617 N.E.2d 403 (1993). "[A]n expert witness *may be cross-examined* as to the views of recognized authorities expressed in treatises or professional periodicals." (Emphasis added.) *Id*. In *Toppel*, the Court further held there was no error in allowing the article to go into the jury room because "the contents of the article were properly brought before the jury" during cross-examination of the plaintiff's expert. *Id.* See also *Fragogiannis vs. Sisters of St. Franscis Health Servs*., 2015 IL App (1st) 141788, PP27-31, discussing the proper use of medical literature for impeachment on cross-examination of experts.

The law governing medical literature applies in workers' compensation cases. In *Folsom vs. North Palos Fire Protection District*, 19 IWCC 372, 2019 Ill. Wrk. Comp. LEXIS 539, the Commission summarized the applicable rule of evidence on this subject:

> An expert witness, in testifying, *may not summarize* findings of studies in medical literature, *nor may he read* from such articles, although he may use them as a basis for his opinion. *Schuchman v. Stackable* (1990), 198 Ill. App. 3d 209, 230, 555 N.E.2d 1012, 1025-26, 144 Ill. Dec. 493; *Mielke*, 124 Ill. App. 3d at 54, 463 N.E.2d at 226. (Emphasis added.)

It therefore logically follows that if an expert cannot read or summarize the contents of medical literature to support an opinion during direct examination, then the contents of medical literature cannot be admitted as separate exhibits in a workers' compensation proceeding for the same purpose absent agreement by the parties. In the present matter, the Arbitrator acknowledged the hearsay nature of the medical literature, however, he accepted Petitioner's reasoning and admitted the documentation into evidence for the limited purpose of reviewing the introductions and abstracts of the studies in order to determine if the experts' reliance on them or disputes with them was reasonable. (Arbitration Decision at 19) The Commission finds this limited purpose a prohibited purpose.

Though Petitioner couched his language in a manner consistent with the definition of hearsay when he offered the medical literature into evidence, i.e., not offered as substantive evidence for the truth of the matter asserted, the proffered medical literature had but one true purpose. In asking the Arbitrator and the Commission to review the contents of the medical literature in order to assess the experts' credibility, the Petitioner is seeking to bolster Dr. Cochran's opinions using medical studies, whose authors are not available for cross-examination, to show that other experts agree with Dr. Cochran. See *Ochoa vs. O'Toole*, 2026 IL App (1st) 250079-U, P58 ("It is hearsay for an expert to bolster his opinion by testifying that other experts agree with him."), citing *Solis vs. BASF Corp.*, 2012 IL App (1st) 110875.

The Appellate Court's decision in *Kochan vs. Owens-Corning Fiberglass Corp.*, 242 Ill. App. 3d 781, 610 N.E.2d 683 (1993), abrogated on other grounds by the Supreme Court in *Nolan vs. Weil-McLain*, 233 Ill. 2d 416, 910 N.E.2d 549 (2009), is instructive here. In *Kochan*, several employees brought a lawsuit against a manufacturer seeking damages for injury brought about by their exposure to products containing asbestos after the manufacturer acquired a supplier of industrial heat-insulation products. The manufacturer began placing warning labels on the products in 1966; however, the employees presented documentary evidence showing the manufacturer had learned of the dangers associated with asbestos in the 1940s and 1950s, long before it acquired the supplier. This documentary evidence was divulged during expert testimony. On appeal, the defendant-manufacturer contended that the trial court had erred in allowing the plaintiffs' expert, Dr. Wagoner, a biostatistician and epidemiologist, to read into evidence the underlying data and information on which he based his opinion that asbestos had already been linked to asbestosis by 1930 and to lung cancer between 1949 and 1955. *Id.* at 803. The Appellate Court found the documentary evidence was properly used since it was offered for a *different purpose* than for the truth of the matters asserted therein:

> One of the issues in the case was defendant's *knowledge* regarding the hazards of asbestos. Plaintiffs offered Dr. Wagoner's testimony to show when the relationship between asbestos and asbestosis was established and to show that medical and industrial literature existed, prior to the time that defendant put warning labels on Kaylo, that end-users of asbestos products had contracted asbestos-related diseases. Plaintiffs hoped to prove by Dr. Wagoner's testimony that it was generally known within the asbestos industry and by defendant by 1955 that asbestos caused asbestosis and lung cancer. A jury could then conclude from all of the evidence that defendant had deliberately chosen to ignore and cover up the dangers of asbestos

> for more than 17 years without warning end-users or finding a substitute for asbestos. (Emphasis added.) *Id.*

The manufacturer relied on *Schuchman vs. Stackable* and *Mielke vs. Condell Memorial Hospital* for its argument that the trial court impermissibly allowed the expert to read from the medical literature. The Court rejected the argument, noting that medical literature and medical studies are not hearsay when *offered for some independent purpose*, rather than the truth of the matter asserted, as the medical literature was relevant to the issue of notice and knowledge. *Id.* at 806. Pertinent to our discussion here, however, is the Court's explanation why the manufacturer's reliance on *Schuchman* and *Mielke* was misplaced. The Court explained that *Schuchman* applies in those situations where the expert is "attempting to *bolster* his opinion by showing that other experts agree with him." (Emphasis added.) *Id.* at 803-804. The Court further commented:

> The expert witness then becomes a conduit for bringing before the jury a number of opinions of other experts without incurring the cost of hiring such experts and without subjecting these other experts to cross-examination. Under these circumstances it does not matter if the witness is an expert in the field for which he is called, but rather the only question is whether the witness can read! *Id*. at 803-804.

The above quoted passage makes clear that using medical literature for the purpose of bolstering the testifying expert's opinion to establish credibility, is in its truest sense, asking the trier of fact to consider the truth of the matters asserted in the medical literature in order to show that other experts agree with the testifying expert. Accordingly, Petitioner's argument that the medical literature in this case was offered merely to enable the Arbitrator and the Commission to assess credibility, conflicts with the hearsay evidence rule because using medical literature for credibility purposes is the same as bolstering the expert with evidence that other experts are in agreement, which requires reliance on the literature for the truth of the matter asserted therein.

Furthermore, the appendices attached to Dr. Cochran's narrative report were also inadmissible hearsay. In *Mielk*e, supra, the trial judge sustained the defendant's hearsay objection when plaintiff's expert attempted to read from his "notes" summarizing the medical literature. On appeal, the Appellate Court determined the trial court correctly disallowed the expert from using his notes at trial. The Court found this to contravene the hearsay evidence rule as the plaintiff was attempting to introduce the facts in the articles as substantive evidence on direct testimony through the expert's attempted reference to his notes summarizing the medical literature. *Mielke vs. Condell Memorial Hospital*, 124 Ill. App. 3d at 54. In the case at bar, Dr. Cochran's appendices serve the same purpose, that being to summarize the contents of the medical literature.

Based on the foregoing, the Commission concludes that the contents of the medical literature cited by Dr. Cochran are inadmissible hearsay. Likewise, the appendices attached to Dr. Cochran's narrative report are also inadmissible hearsay, as they represent Dr. Cochran's summation of the contents set forth in the medical studies, which equates to her reading from personal notes or reading from the published materials. The Commission further finds that the contents of the medical literature cited by Dr. Shah is inadmissible hearsay.

III. Petitioner's argument based on *People vs. Anderson*.

Petitioner advances the argument that the contents of the medical studies can nevertheless be reviewed by the Commission pursuant to *People vs. Anderson*, 113 Ill. 2d 1, 495 N.E.2d 485 (1986). In *Anderson*, the Supreme Court declared, "in our judgment the logic underlying Rule 703 and this court's decisions in *Ward* and *Wilson* compels the conclusion that an expert should be allowed to reveal the contents of materials upon which he reasonably relies in order to explain the basis of his opinion." *Id.* at 9. The Supreme Court further noted:

> Rule 703 was designed to "'broaden the basis for expert opinions * * * and to bring the judicial practice into line with the practice of the experts themselves when not in court.'" (People v. Ward (1975), 61 Ill. 2d 559, 567, quoting Advisory Committee Note to Rule 703.) The rule thus expands the range of information available, at least indirectly, to the trier of fact. Inasmuch as the opinion based on these materials -- which are deemed trustworthy by the profession -- is allowed, it would be both illogical and anomalous to deprive the jury of the reasons supporting that opinion. *Id.* at 9-10.

The Supreme Court further noted there being a downside to preventing experts from referring to the contents of materials they rely upon while testifying, explaining that the restriction may inadvertently create the appearance that the expert's opinion is "based on flimsy and inconclusive" reasons. *Id.* at 10-11.

The Commission finds *People vs. Anderson* is distinguishable and questions its applicability here. In *Anderson*, a criminal defendant charged with murder and armed violence presented an insanity defense at trial. The defendant presented his psychiatrist who opined the defendant was unable to conform his conduct to the requirements of the law and was unable to appreciate the criminality of his acts. *Id.* at 4. The State presented the contrary opinion of its psychiatrist, and the parties stipulated that a third psychiatrist who, like the State's expert witness, believed the defendant was sane. After the jury returned a guilty verdict, the defendant raised two issues on appeal, the second of which related to an evidentiary ruling. During the trial, the judge refused to allow any disclosure of the "contents of the reports" upon which the defendant's psychiatrist relied in forming his opinion. As described by the Supreme Court, the reports included evaluations by psychiatrists, doctors, and counselors made while Anderson was in the army and while previously incarcerated in California. The defendant's psychiatrist also reviewed reports by the State's psychiatric experts, and other information relating to a previous criminal offense. The defense expert was allowed only to state that he utilized these reports. *Id.* at 7. On appeal, the Supreme Court held that the jury should be given the opportunity to review the contents of the documents. The Commission finds the *Anderson* decision distinguishable in two key respects. First, the issue in *Anderson* was diagnosis, not medical causation. Second, the *Anderson* Court was dealing with medical records pertaining directly to evaluations of the defendant. At no time did the defense psychiatrist rely on published medical literature or medical studies for his insanity diagnosis.

Subsequent court decisions support this distinction. In *Lewis vs. Stoval*, 272 Ill. App. 3d 467, 650 N.E.2d 1074 (1995), a patient sued her knee surgeon for malpractice alleging the surgeon failed to diagnose and treat an infection which developed following a knee replacement, which ultimately necessitated hardware removal and fusion of the knee joint. At a second trial (the first ended in a mistrial), the trial judge allowed the patient's expert to "read" from a medical article the expert had published in 1980. *Id.* at 469. The expert was also allowed to read from a 1977 article, not authored by the expert, but cited in a footnote in the expert's 1980 article. The trial judge also allowed these two articles to go to the jury during their deliberations. *Id.* at. 469. On appeal, the surgeon argued it was impermissible to admit the medical literature on hearsay grounds. In response to the surgeon's argument, the patient relied on *People vs. Anderson*. The Court found *People vs. Anderson* distinguishable and held the trial judge erred in permitting the expert to read from the articles because it was clear the statements read to the jury by Dr. Schurman were being offered as substantive evidence to bolster his testimony. In its decision, the Appellate Court explained why *People vs. Anderson* was inapplicable:

> *Anderson* is readily distinguishable in that the documents in *Anderson* ***were reports and evaluations made by psychiatrists, doctors and counselors of a criminal defendant's mental health***. ***They directly concerned the defendant's sanity*** - an issue in the case - and logically served as a basis for the testifying expert's opinion on the issue of sanity. The supreme court held that it was important to reveal to the trier of fact those facts on which the expert relied in reaching an opinion. This would better enable the trier of fact to evaluate the expert's testimony. The *Anderson* court was not saying such materials were not hearsay. They were admissible for the limited purpose of explaining the basis for the expert's opinion and the jury should be so instructed. * * * In addition, ***the articles*** [in the instant case] ***did not relate directly to the treatment of the plaintiff in this case. They reported the results of studies*** on the rapidity with which certain antibiotics penetrate different human tissues. The articles concerned the use of antibiotics pre-operatively or prophylactically to prevent infections in joint and hip replacements. (Emphasis added.) *Lewis vs. Stoval*, 272 Ill. App. 3d 467, at 470-471.

Additionally, in *Schuchman vs. Stackable*, supra, the Court held that "[i]f an expert witness may not summarize the findings of articles, it follows logically that an expert witness may not read from such articles." *Schuchman,* 198 Ill. App. 3d 209, 230 (1990). The *Schuchman* Court relied on *Mielke* in its analysis of the issue, and without mentioning *People vs. Anderson*, the Court noted that the trial court properly precluded the medical expert from reading articles from the medical literature because the excluded testimony *did not directly concern the claimant's treatment*. *Id*. at 230.

Dr. Cochran is permitted to cite to the medical studies and explain how they formed the basis for her opinions during direct examination; however, it is not permissible to admit the contents of the published medical literature and studies into evidence where the medical literature serves the purpose of bolstering Dr. Cochran's causation opinion. In considering the medical studies to assess Dr. Cochran's credibility, the Arbitrator essentially permitted Petitioner to substantively bolster her opinions, which was improper as the medical literature could not have

aided the Arbitrator in making a credibility assessment unless the contents of the medical studies were used for the truth of the matter asserted. The Commission concludes we must evaluate the qualifications, testimony, and reasoning employed by the parties' medical experts in determining their respective credibility and the weight to be accorded to their opinions.

IV. Dr. Cochran's and Dr. Shah's reports

Over Respondent's hearsay objections, the Arbitrator admitted into evidence the doctor's narrative opinion reports. Petitioner likewise made a hearsay objection regarding Dr. Shah's reports, but Petitioner's objection was conditioned on whether Respondent's objections were sustained. For the reasons outlined below, the Commission strikes the Arbitrator's recitation of the reports for both Dr. Cochran and Dr. Shah, starting with the bottom paragraph on page eight (8) through middle of page eleven (11), where the Arbitrator's discussion of the reports ends with the paragraph preceding the next paragraph commencing with "The deposition of Dr. Cochran was taken by the parties on 11/5/24."

The Arbitrator agreed the reports were "technically hearsay" but nevertheless allowed them into evidence because Respondent had an opportunity to cross-examine Dr. Cochran. (T. 237) The Arbitrator further reasoned that it is difficult to read depositions without having the reports. (T. 237) The Illinois Rules of Evidence apply in all proceedings before the Commission, either upon arbitration or review, except to the extent they conflict with the Act. 50 Ill. Admin. Code § 9030.70(a). It is undisputed that Section 12 IME reports are hearsay. The Arbitrator reasoned that the hearsay rule ceases to apply if the expert testifies. However, as explained by the Supreme Court in *People vs. Lawler*, 142 Ill. 2d 548, 557, 568 N.E.2d 895 (1991), the presence or absence of a declarant in court is irrelevant to a determination as to whether the out-of-court statement is hearsay. In *Lawler*, the prosecution argued that a statement from a witness as to his own prior out-of-court statement cannot violate the hearsay rule because the witness is present to testify at trial with the safeguards of an oath and cross-examination, reducing the risk of perjured testimony. The Court rejected the argument, observing that "[a]doption of the State's rationale would essentially obliterate a good portion of the hearsay rule." *Id*. Accordingly, an expert's narrative report does not become non-hearsay merely because the expert testifies. The Commission therefore finds the narrative opinion reports by Dr. Cochran and Dr. Shah are inadmissible.

OCCUPATIONAL DISEASE – CAUSATION

A claimant seeking compensation under the Occupational Diseases Act has the burden to prove he developed an occupational disease and that the disease is causally related to the employment. Pursuant to §1(d), the Occupational Diseases Act defines causation:

> 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).

Section 1(d) of the Occupational Diseases Act also contains a provision creating a rebuttable presumption for firefighters. In *Johnston vs. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC, which interpreted the rebuttable presumption applicable to firefighters in §6(f) of the Workers' Compensation Act, the Court determined that §6(f) creates an "ordinary" presumption which requires production of "some evidence" to rebut the presumption. The Court later applied the same rationale to §1(d) of the Occupational Diseases Act, holding that the presumption favoring firefighters in the Occupational Diseases Act is also an ordinary presumption. See *Ekkert vs. Illinois Workers Compensation Comm'n*, 2018 IL App (2d) 170447WC-U, PP 44-45.) The Court reaffirmed this holding in *Mangiameli vs. Illinois Workers' Compensation Comm'n*, 2024 Ill. App (1st) 231397WC-U, PP 36-37 (affirming Commission's decision applying *Johnston* to the Occupational Diseases Act.) The Arbitrator correctly found that Respondent successfully rebutted the presumption. Once the presumption is rebutted, the presumption disappears and the claimant has the burden to prove causation.

The Commission finds significant Petitioner did not provide any causation opinion testimony from any of his treating physicians; his treatment team included Dr. Arico (dermatologist), Dr. Olson (Hematology/Oncology), Dr. Agrawal (ENT surgeon), and Dr. Gooi (ENT surgeon). Based on our review of the medical records, there is nothing to indicate that Petitioner discussed causation with any of his treating physicians and Petitioner does not cite to any supporting causation opinions by any treating physician. Instead, Petitioner presented the opinion testimony of his Section 12 medical expert, Dr. Barbara Cochran. Respondent presented the opinion testimony of its Section 12 medical expert, Dr. Neel Shah. Both experts performed medical records reviews and relied on medical literature. The Commission finds Dr. Shah more credible than Dr. Cochran and accordingly affords greater weight to Dr. Shah's opinions.

Dr. Barbara Cochran is board certified in internal medicine with no specialized education or training in dermatology, hematology, or oncology. Dr. Cochran holds herself out as an occupational medicine specialist; however, she was never board certified in occupational medicine. Looking at her curriculum vitae in conjunction with her testimony, there is no evidence showing Dr. Cochran has had any specialized education and training in the areas of epidemiology, toxicology, or preventive medicine and public health. When asked on direct examination to describe her "education and experience" as it relates to analyzing the causation of diseases contracted by firefighters, Dr. Cochran failed to describe in what way her education and experience factored into this area. Instead, Dr. Cochran testified that within the context of working in workers' compensation she utilizes *guidelines* published by the American College of Occupational and Environmental Medicine. Since 2009, Dr. Cochran has performed disability evaluations for the Social Security Administration. Dr. Cochran testified she evaluates about 60 cases a week for social security assessments. Dr. Cochran also serves as a causation analyst for occupational related claims in multiple states and relies on published medical literature for her opinions. Dr. Cochran has served as a medical expert in claims involving a wide array of conditions including heart disease, cancer, traumatic brain injury, and orthopedics.

In contrast, Respondent presented the opinion testimony of Dr. Shah, who is board certified in hematology and oncology. He is fellowship trained in both hematology and oncology as well as stem cell transplantation. Dr. Shah is a cancer specialist and testified he has treated firefighters in his practice. Dr. Shah testified there are studies showing firefighters are at increased risk for leukemia, lung cancer and bladder cancer; however, as Dr. Shah noted, there are over two hundred types of cancer, each possessing different characteristics and risk factors. Dr. Shah testified he has been treating patients with melanoma for over 15 years and based on his review of the medical literature there is insufficient evidence to causally link melanoma to firefighting. Dr. Shah opined there is no reliable evidence to link melanoma to the hazards of firefighting. Dr. Shah also relied on medical studies for his opinion. Dr. Shah challenged Dr. Cochran's methodology, explaining that she groups all cancers into one entity, and from the data showing some cancers have an association with firefighting she concludes that melanoma is also likely related to firefighting. Furthermore, Dr. Shah noted that while there are some studies suggesting a possible increased incidence of melanoma among firefighters, the data fails to establish the association. In short, Dr. Shah found the medical data to be inconclusive. Dr. Shah further noted that Petitioner has "proven risk factors" for melanoma which included his fair skin complexion, prior alcohol use, and family history of skin cancer. Dr. Shah acknowledged that Petitioner's father had a non-melanoma form of skin cancer; however, he credibly explained that while a family history for melanoma poses an even higher risk for melanoma, the presence of non-melanoma in one's family still poses a risk for melanoma.

Dr. Cochran testified that genetics and family history have no relevance for causation. The Commission finds Dr. Shah's testimony more credible on this point based on his experience as a cancer specialist. Dr. Cochran agreed that sun exposure is a risk factor but testified that Petitioner had no significant sun exposure in his life. Petitioner testified to engaging in outdoor activities here in Illinois and in Arizona, where he owns a home, including hiking. Petitioner denied using sunscreen for his scalp but testified he typically wore a hat or cap. The Commission finds that Petitioner's testimony regarding the use of a cap or hat did not unequivocally rule out sun exposure at all times during outdoor activities. Dr. Cochran equated the risk of sun exposure as emanating from a history of severe sunburn; however, Dr. Shah credibly explained that intermittent sun exposure can also pose a risk for melanoma.

Finally, referring back to Petitioner's argument that Dr. Cochran's cited medical literature should be admissible for credibility purposes, the Commission finds our decision would not change if the contents of the medical literature could be considered. The Commission notes that as a whole the medical studies addressing melanoma among firefighters are inconclusive as to causality.

Therefore, the Commission finds that Petitioner failed to prove by a preponderance of the evidence that he was exposed to an occupational disease arising out of and in the course of his employment on February 8, 2023, and further finds Petitioner failed to prove his condition was causally connected to exposure from his employment. All other issues are rendered moot. Accordingly, the Arbitrator's decision is hereby reversed and Petitioner's claim for compensation is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award dated October 8, 2025, is vacated and Petitioner's claim for compensation is hereby denied.

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2) (West 2013)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

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

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

DISSENT

I respectfully dissent from the opinion of the majority and would find Petitioner met his burden of proof that his melanoma was causally connected to his employment, and I would affirm and adopt the Decision of the Arbitrator. As with the majority, I would review the literature for a limited purpose. I concur with the majority that the Arbitrator was required by Respondent's own objections to Dr. Cochran to review the literature introduced for limited purposes, but I disagree with the majority about the extent of those purposes. I find the credibility attacks to have been impeachment, and such literature is admissible for that purpose. I would make the same evidentiary rulings as the Arbitrator, and believe the Arbitrator correctly considered the literature for limited purposes. Separately considering the weight of the experts with only the substantive evidence, I would find Dr. Cochran more persuasive, and find that Petitioner met his burden that his employment was at least a contributing factor in the development of his disease.

I highlight the following additional facts as relevant to my conclusions.

During the admission of exhibits in this claim, Respondent objected to the transcript of Dr. Cochran's testimony stating: "we object to any opinions rendered by Dr. Cochran as well as foundation regarding whether she is an expert and could, per Frye, F-R-Y-E, testify in a matter such as this." T. 232.

Petitioner sought introduction of appendices of Dr. Cochran's report and medical literature studies relied upon by Dr. Cochran. He made the following statement regarding the admission those exhibits:

> "And, again, I am not seeking for the record to admit these as substantive evidence. What I am seeking to do is to admit them so that – I shouldn't say admit them. I'm seeking to have the trier of fact, your Honor, the Commission, look at these to determine the weight and credibility to be given to each expert in this case." T. 250.

In response, Respondent raised the objection that: "All of these documents, regardless of what they are, are hearsay." T. 257.

These evidentiary objections are threshold issues and must be ruled upon prior to making any finding of fact. Respondent has preserved these issues by their Statement of Exceptions, which continues to raise Dr. Cochran's qualification to testify before the Commission and the hearsay nature of the medical literature. For this reason, I will explain my reasoning in dissenting and in desiring to adopt the entire Arbitrator's Decision.

Regarding *Frye,* the Arbitrator does not make an explicit ruling. However, he refers to her opinions and weighs them against that of Dr. Shah, Respondent's expert, implicitly accepting her as an expert. *Crowder v. Cedarhurst of Collinsville*, 24 IWCC 0056, 2024 Ill. Wrk. Comp. LEXIS 59.

Regarding the hearsay objection, the Arbitrator addresses the disputed admission of the medical literature studies on page 26 of his Decision. The Arbitrator specifically lays out the context in which he is admitting and reviewing the literature. He outlines the credibility attack made by Dr. Shah against Dr. Cochran when Dr. Shah contradicted Dr. Shah and stated that there were no studies in support of causation. The Arbitrator states that he is admitting and examining the documents under Illinois Rule of Evidence 703 to resolve the credibility dispute. He states that he is doing so after determining that the probative value did not outweigh any prejudice, and that he will not be relying on the literature to come to factual conclusions, but only to address the credibility and weight issues.

The Illinois Rules of Evidence ("IRE") govern hearings before the Commission pursuant to Commission Rule 9030.70. The specific IRE regarding witnesses are found in Article VII, and the *Frye* standard was codified in IRE 702. The rules governing hearsay are codified under Article VIII. Respondent's objection requires a ruling on admission of evidence governed by IRE 104 and 1101, limited admissibility of evidence is governed by IRE 105, the weight of probative value by IRE 403, and the Arbitrator has correctly identified IRE 703 as governing materials foundational to expert reports.

IRE 104(a) governs hearings on admissibility, including the "Preliminary questions concerning the qualification of a person to be a witness… or the admissibility of evidence." The conclusory sentence of 104(a) is "In making its determination, the court is not bound by the rules of evidence except those with respect to privileges." Ill. R. Evid. 104.

IRE 105 governs limited admissibility, and states that "when evidence is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper purpose or scope…". Ill. R. Evid. 105.

IRE 403 governs the exclusion of relevant evidence, permitting the exclusion of relevant and admissible evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403.

IRE 702 states in relevant part: "Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs." Ill. R. Evid. 702.

In *Wilson v. Clark,* 84 Ill. 2d 186, 417 N.E.2d 1322 (1981)*,* the Illinois Supreme Court adopted Federal Rule 703, which would later be codified as IRE 703. Adopting these rules was explicitly done to dispense with the expenditure of time required to produce and examine every person that makes an entry in hospital records. It became the "undisputed" law in Illinois that an expert may utilize inadmissible materials to form their opinions so long as those materials are of the type reasonably relied upon by experts in their field. *People v. Anderson*, 113 Ill. 2d 1, 7, 495 N.E.2d 485, 487 (1986). The purpose of the rule was to expand the range of information available to the trier of fact. Where the opinion was based on materials deemed trustworthy by the profession it was considered illogical and anomalous to deprive the fact-finder of the reasons supporting the opinion. *People v. Anderson*, 113 Ill. 2d 1, 10, 495 N.E.2d 485, 489 (1986).

As codified, IRE 703 states "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Ill. R. Evid. 703.

IRE 1101(b) states that the Rules of evidence do not apply to "(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104." Ill. R. Evid. 1101.

Pursuant to Section 19 of the Act, the Commission is tasked to resolve both the disputed issues of law and fact. 820 ILCS 305/1 §19. For this reason, the Commission must first rule on the admissibility of evidence for each purpose, but then consider only the appropriate evidence to make its findings. I note that this approach was affirmed by the Appellate Court in *Ramirez v. Illinois Workers' Comp. Comm'n*, 2025 IL App (1st) 242467WC. In that case the respondent had denied benefits and cited an incomplete drug test as a reasonable cause. The test was not admitted to show intoxication, but because the petitioner had requested penalties, thereby raising reasonableness, the drug test was admitted for a limited purpose. The Appellate Court found "it

was proper for the Commission to admit and consider the exhibits for the limited purpose of determining the reasonableness of the respondents' actions." *Id. at* ¶ 24.

I would affirm the Arbitrator's ruling that he could not rely on the studies to make determinations in the case. The conclusions of the studies are not substantive evidence on the issue of causation. As with the majority, I would find the literature admissible for the purpose of the *Frye* ruling. As in *Ramirez*, a party opened the door to the consideration of the studies for non-hearsay purposes by their actions. However, I go further than the majority and find Respondent opened the door far enough to allow the literature to be considered for credibility, to resolve impeachment of Dr. Shah and Dr. Cochran. Because of Respondent's objections and credibility attacks on Dr. Cochran, the Arbitrator was correct to review the studies for limited purposes, including for purposes of resolving impeachment of the experts' credibility.

I note that this is consistent with the offer of evidence made by Petitioner. The statement on the record was that the literature was not being offered as substantive evidence. In this case, the literature at question is inadmissible hearsay if offered to show the causes of cancer. It would also be inadmissible if Petitioner used it to bolster Dr. Cochran's opinion on direct. However, when Dr. Shah made a statement of fact that there was no literature to the effect cited, he impeached Dr. Cochran and opened himself up to impeachment.

I also note that *People v. Anderson,* cited by the majority*,* responds to concerns that an uninformed jury could misuse documents admitted for a limited purpose and consider documents as substantive proof. The court recommended that the information could still be provided to a jury with the presence of a limiting instruction[1] and the screening of a judge to protect against potential prejudicial or confusing impact. *People v. Anderson*, 113 Ill. 2d 1, 12, 495 N.E.2d 485, 490 (1986).

The Commission is not an uninformed jury. The Commission has well recognized medical expertise and is owed great deference in its medical conclusions. *Osman v. Illinois Workers' Comp. Comm'n*, 2024 IL App (2d) 230180WC, ¶ 49, 478 Ill. Dec. 165, 177, 245 N.E.3d 49, 61 citing *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566, 394 N.E.2d 1192, 31 Ill. Dec. 815 (1979). The Commission is quite capable of differentiating between information introduced to determine medical qualifications and credibility versus that introduced for its own conclusory truth. The Arbitrator correctly considered his obligations under IRE 403 and weighed the probative value of the literature.

In making a *Frye* objection, Respondent raised the issue of the admissibility of Dr. Cochran's opinions under IRE 702, requiring an application of IRE 104(a). Respondent also argues that Dr. Cochran has been found not-credible in prior claims, and provides citations. I concur with the majority that in a *Frye* ruling on admission and qualification the other rules of evidence, including the rules against hearsay, do not apply. For this purpose, the Arbitrator and the Commission are free to review the literature to determine if the principles on which Dr. Cochran based her opinions were sufficiently established.

[1] Such instruction now exists as Illinois Pattern Civil Jury Instruction 2.04.

In stating that there were no studies in support of Dr. Cochran's opinion, Dr. Shah attacked the foundations of Dr. Cochran's report under IRE 703. In Respondent's own words he: "testified as to the deficiencies of her reports." (Statement of Exceptions p. 11) As above, IRE 703 requires that the inadmissible facts behind an expert's opinion be "of a type reasonably relied upon by experts in the particular field". If, as Dr. Shah alleges, there was no literature to the effect Dr. Cochran alleged, then her opinions would have been meritless, and inadmissible. In determining the admission of Dr. Cochran's opinions, the Arbitrator and the Commission are free to review the literature to determine if she relied upon facts of a type permitted.

The statement that there were no studies in support also acts as a credibility attack by Respondent's expert witness against Petitioner's. The purpose of 'impeachment' is to destroy credibility rather than to prove the truth of the matters stated in the impeaching testimony. *Kubisz v. Johnson*, 29 Ill. App. 3d 381, 383 (4th Dist. 1975). Scientific treatises can be used to impeach even if they are not used to prove the proof of the matter asserted. *Fornoff v. Parke-Davis & Co.*, 105 Ill. App. 3d 681, 690-91. (1982). Whether the exhibits impeach Dr. Cochran, by confirming that no literature is to the effect she alleged, or impeach Dr. Shah, by showing that there was literature to the effect Dr. Cochran alleged, the Arbitrator and the Commission are free to review the literature for the limited purposes of assessing impeachment. If, as the Arbitrator notes, one expert states that there are multiple studies indicating a causal connection, and another states that there are none, the Commission can use offered evidence to determine whether any studies indicate a connection exists without determining if a connection truly exists.

I make the following evidentiary rulings. First, Dr. Cochran is qualified as an expert under IRE 702. While Respondent asserts we have found Dr. Cochran "not credible to testify" and cite to prior decisions, Respondent is incorrect. Respondent cites, *Koop, Bloom*, and *McDonald*. In *Koop v. City of Elgin*, 21 IWCC 0483, the Commission affirmed the decision of the Arbitrator when he awarded benefits based in part on Dr. Cochran's testimony. In *Bloom v. Greater Round Lake FPD*, 24 IWCC 0495, a majority opinion affirmed the decision of the Arbitrator when he found that the other expert was "better credentialed" and assigned more weight to that expert over Dr. Cochran. (I dissented from that opinion for reasons unrelated to expert credibility.) Finally, in *McDonald v. Palos Fire Protection District,* 25 IWCC 0317, the Commission affirmed and adopted the opinion of the Arbitrator when the Arbitrator again found the other expert better credentialed and assigned more weight to that expert. No Commission Decision has found Dr. Cochran not credible to testify. Instead, one case assigned her more weight and two assigned her lesser weight. Reviewing her reports and the evidence, I would find she is qualified under IRE 702.

Second, Dr. Cochran's opinions are admissible under IRE 703. Her opinions are based on facts of a type reasonably relied upon by experts in the particular field.

Third, Dr. Shah's credibility attack is not persuasive as impeachment. Reasonable doctors and scientists may disagree, as is often the case before the Commission. Dr. Shah's statement appears to be puffery or a statement based in a different understanding of the standard of proof in Illinois.

Having ruled on admission and qualification, I now exclude the literature for purposes of my opinion on causation. I weigh the experts and would find the opinion of Dr. Cochran to be more credible. Dr. Cochran is board certified and has practiced medicine since 1971. For the last 15 years she has practiced medicine as an expert in the diseases contracted by firefighters. Dr. Shah is board certified and currently practices in Northwest Indiana and serves as a professor of medicine at Indiana University School of Medicine. In his capacity as a teacher and treating physician, Dr. Shah routinely addresses the causes and risk factors of different types of cancer.

While it is true that the Commission has previously given greater weight to various employee's treating doctors, we have done so because the doctors involved have had more time and visits with the employees, or because of concerns regarding bias. While a doctor who regularly provides treatment may have greater familiarity and expertise in treatment and its outcomes, an expert who regularly provides causal opinions may have greater familiarity and expertise with the causes of disease or the risk of occupation. It is for this reason, among others, that both parties are permitted to retain a qualified medical practitioner to conduct an examination under Section 12 of the Act. As a consequence, I do not find Dr. Shah's credentials as a treating oncologist make him automatically more credible than Dr. Cochran.

Nor do I find the issue of the unsettled scientific consensus a reason to award or deny benefits. The majority states that Dr. Shah noted that some studies suggest a possible increased incidence of melanoma among firefighters. Dr. Shah finds the medical data to be inconclusive. Dr. Cochran finds scientific evidence of causation. Scientific consensus is not required for the Commission to award benefits, and I note the Supreme Court's approving quotation of Professor Larson's treatise: "A finding that a disease is work-connected will not be reversed as being based on speculation and conjecture merely because the medical profession does not fully understand the etiology of the disease. 3 A. Larson, Workmen's Compensation, sec. 80.31 (c)(1983)." *Certi-Serve v. Industrial Comm'n,* 101 Ill. 2d 236, 245, 78 Ill. Dec. 120, 461 N.E.2d 954 (1984).

Instead, I examine Dr. Shah's assumptions about the standard of causation and find him wanting. It appears that Dr. Shah has mistaken the standard of proof in workers' compensation claims in Illinois. While the Respondent, in page 17 of their Statement of Exceptions, chastises the Arbitrator for misstating that Dr. Shah found work exposure was not the "prevailing factor" in the development of melanoma, the Respondent expresses Dr. Shah's "actual opinion" and quotes his opinion:

> "While occupational exposures can increase the risk of cancers in general, there is no evidence to support in this case that there is a direct causal relationship between his work as a firefighter and his invasive melanoma. Mr. Kozak's work was not the prevailing factor in the development of his cancer-his skin tone and family history were. Ultimately, there is no test or data to prove that his occupational exposure was a cause in the development of his cancer." Respondent's Statement of Exceptions p 17 citing RX3 DepX2 p. 3.

Respondent's quote only emphasizes the weakness in Dr. Shah's opinion. Nothing in the Occupational Diseases Act requires proof of a *direct* causal opinion. *Sperling v. Industrial Comm'n*, 129 Ill. 2d 416, 421, 544 N.E.2d 290, 292, 135 Ill. Dec. 794 (1989).

I find the opinion in *Omron Elecs v. Illinois Workers' Comp. Comm'n*, 2014 IL App (1st) 130766WC instructive. In that matter, the widow of a deceased employee claimed benefits in connection with the death of her husband. She alleged he was exposed to neisseria meningitides while on a business trip to Sao Paolo Brazil for his employer. That disease was then more prevalent in Sao Paolo than in the United States. His interaction with a number of people was known, but no specific carrier of the disease was identified in evidence. Four medical experts gave opinions, two opining to a reasonable degree of medical and causal certainty that he was exposed in Brazil, and two that he was exposed in Brazil or the United States. The Commission gave greater weight to the two doctors who testified he was exposed in Brazil and found causation. This opinion was affirmed by the Appellate Court who noted that there was the above "nothing in the statutory language" requiring proof of a direct causal connection, and that a causal connection may be based on an expert's opinion that an accident "could have" or "might have" caused an injury. *Omron Elecs v. Illinois Workers' Comp. Comm'n*, 2014 IL App (1st) 130766WC, ¶ 38, 21 N.E.3d 1245.

I note that *Omrom* quotes *Sperling v. Industrial Comm'n*, which gives this informative history of the Occupational Diseases Act:

> "Nothing in the statutory language requires proof of a direct causal connection. Further, the legislature explicitly changed this requirement in 1975 when it deleted the word 'direct,' which had preceded 'causal connection,' from the statutory language. Public Act 79 -- 78, approved June 30, 1975, rewrote the first two paragraphs of subparagraph (d) of section 1 and eliminated the requirement that it be apparent that there is a *direct* causal connection. (See Ill. Ann. Stat., ch. 48, par. 172.36, Historical Note, at 209 (Smith-Hurd 1986).) *Sperling v. Industrial Comm'n.*, at 421.

A claimant only needs to prove that work was a causative factor in his disease, not that it was the only factor or that there were no other contributing factors. *Gross v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100615WC, ¶ 22. See also *Old Ben Coal Co. v. Industrial Comm'n,* 217 Ill.App.3d 70 (5th Dist. 1991), where a coal miner's respiratory impairment was caused by smoking and coal workers' pneumoconiosis, and benefits were awarded because pneumoconiosis was a contributing factor.

It is for this reason that I do not consider the issues of his other risk factors, like fair skin complexion, prior alcohol use, use of a hat, or family history to be on point on causation. It was not Petitioner's burden to deny the existence of other factors, it was his obligation to show that his work was one of the causative factors.

I would find that Dr. Shah has opined under the older "direct cause" standard that Illinois abandoned in 1975; perhaps because Dr. Shah practices in Indiana, where such standard still applies. Considering this issue and the evidence, I would find that Dr. Shah's opinions are to be

given lesser weight than those of Dr. Cochran and I would find Petitioner has met his burden that his employment duties were at least a contributing factor in the development of his cancer.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013951
Case Name	Christopher Kozak v. Lockport Township Fire Protection District
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Alan Karpel
Respondent Attorney	Kisa Sthankiya

DATE FILED: 10/8/2025

/s/ Paul Cellini, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 7 2025 3.70%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

CHRISTOPHER KOZAK Case # **23** WC **13951**
Employee/Petitioner
v.
LOCKPORT FIRE PROTECTION DISTRICT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **May 14, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 8, 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 $**141,858.47**; the average weekly wage was $**2,728.05**.

On the date of accident, Petitioner was **48** 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 $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**0** for other benefits.

ORDER

The Arbitrator finds that the Petitioner was exposed to the hazards of an occupational disease with a date of disablement of February 8, 2023, and that Petitioner was exposed to occupational hazards which arose out of and in the course of his employment with Respondent.

The Arbitrator finds that the Petitioner's left scalp melanoma condition is causally related to the occupational exposure.

The Arbitrator finds that the Petitioner provided proper notice of the exposure and injury pursuant to Section 6(c) of the Occupational Diseases Act.

Respondent shall pay Petitioner temporary total disability benefits of **$1,818.70 per week** for **27-5/7 weeks**, commencing **February 8, 2023 through February 28, 2023, from March 22, 2023 through August 3, 2023, and from August 5, 2023 through September 11, 2023**, as provided in Section 8(b) of the Act.

Respondent has failed to prove that it is entitled to credit for the wages received by Petitioner via his use of accumulated sick time while he was off work for this injury.

Respondent shall pay the reasonable and necessary medical expenses contained in Petitioner's Exhibit 4 from DULY and University of Chicago, as provided in Sections 8(a) and 8.2 of the Workers' Compensation Act and Section 7 of the Occupational Diseases Act.

Respondent shall be given a credit for any medical expenses that have been paid by Respondent prior to the hearing via Blue Cross/Blue Shield, 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 reimburse Petitioner for any co-pay or deductible out-of-pocket expenses associated with the payments by Blue Cross/Blue Shield. Respondent is only liable for the medical expenses to the extent of the amounts accepted by the providers as full payment of the noted medical expenses if said amounts are less than

what would be due and owing pursuant to the Medical Fee Schedule in Section 8.2 of the Workers' Compensation Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$998.02 per week**, the maximum allowable statutory rate, for **50 weeks**, because the injuries sustained caused the loss of use of **10% of the person as a whole**, as provided in Section 8(d)2 of the Act.

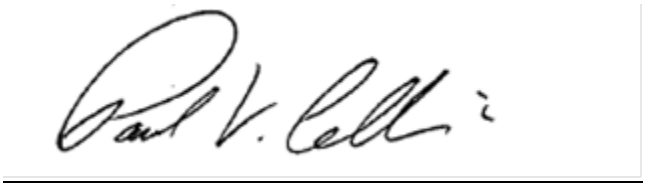
Penalties and Attorney Fees, as provided in Sections 16, 19(k), and 19(l) of the Act are denied.

The various evidentiary issues raised by the parties are addressed in the Conclusions of Law section of this decision, below.

Respondent shall pay Petitioner compensation that has accrued from **February 8, 2023** through **May 14, 2025**, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

OCTOBER 8 2025

STATEMENT OF FACTS

Petitioner has been a fireman/paramedic for Respondent since 1998, after first working as a full-time firefighter in Mokena, and is currently a Captain assigned to Station 2 (out of 6). Fire Chief O'Connor is the head of the Department, whom Petitioner went to paramedic training with and considers a social friend outside of work. Petitioner testified he has battled all manner of fires – garbage cans, commercial and residential buildings, vehicles, brush fires, electrical fires, etc. - "pretty much everything that can burn." He has been involved in electrical fires and fires involving chemicals, though he didn't testify to any specifics in this regard. After one electrical fire in Lockport, where he was going in and out for hours, he had some chest pain with breathing, and the Chief at the time had everyone fill out Form 45's. They do check for chemicals present at industrial sites by looking around the fire and the type of business involved. They also visit and go through various businesses weekly to pre-plan how to fight a fire if needed. Due to environmental changes over the years, firefighter training no longer involves burning actual structures, like abandoned homes, but rather burn things like hay inside the structure. Petitioner wore bunker gear at fires, including PPE (personal protective equipment), coat

and pants, boots, helmet, Nomex hood, SCBA (Self-Contained Breathing Apparatus) tank, mask, and gloves. The hood protects the skin from heat and covers the back of the head, neck, and chest. Hoods are now required but didn't use to be. Firefighting is either offensive, i.e. attacking the fire, or defensive, staying outside of the building and then performing overhaul and demolition looking for hidden fires. "Overhaul" involves going through a structure after extinguishing a fire to perform some demolition and to check if there are still hot spots. There is often lingering smoke and smoldering during overhaul. Petitioner would dress at the fire truck before going on a call and add more PPE gear as they approach a fire and at the fire scene before going into a burning building. Currently they remove the mask after exiting a building or when air monitoring indicates it's safe. They used to perform overhauls without any mask or face covering. Helmets have changed over the years, but Petitioner testified he developed his scalp bump pretty much directly under where the adjustable plastic band sits. They tend to wear gear for longer periods than they used to, and he has worn his PPE gear for over 4 hours before. The gear, including hoods, is dirty and wet after a firefight, with soot, smoke, and particulate. Respondent installed extractor washing machines at the fire stations to clean gear about fifteen years ago. The gear is separated, washed, and dried. Prior to that, the gear was never cleaned, and dirty gear was a "badge of honor." Helmets are wiped down with a cleaning solution, including the straps, but they weren't even thought to be cleaned until the last 5 years. Equipment is stored in gear lockers in the apparatus bay when not in use.

Fire Engines and ambulances have diesel engines. Two fire engines and two ambulances are kept in the Station 2 bays, one of each generally used as a backup. The engines are started inside the apparatus bay and the doors are opened, and they usually leave within a minute. Engines are run inside the bay for rig checks. The bays have had a vacuum hose system that attaches to the exhaust pipes, blowing it outside, for at least 15 years. These should be on the trucks when the engine is started, though they have been inoperable at times before repairs, including for about the last two weeks. There was no exhaust mitigation when he worked in Mokena prior to starting with Respondent, and there as well as with Respondent until the system was installed, vehicles were started in the building. Over time, the walls would get soot from the diesel vehicles running indoors. Soot would also sometimes come out of Petitioner's nose for a while after fighting a fire.

Petitioner testified he developed a lesion on his head that was diagnosed as melanoma in February 2023, noting he never had the lesion examined before then. He had no prior cancer diagnoses. On 2/7/23, he asked Dr. Kota during an annual employment physical (physicals are performed every five years) to look at an itchy bump on his head. He was advised to see a dermatologist to get it removed. He saw Physician's Assistant Christopher Arico at DULY on 2/9/23, and a biopsy at that time indicated the lesion was melanoma. He was referred to the University of Chicago (U of C, hereinafter), and was held off work due to the open wound. (Px2).

Petitioner saw Dr. Olson at U of C on 2/21/23, reporting a bump growing on his head over the prior few months. Also documented was: "He had noted some darkened skin going back at least a few years when his hair was cut shorter but had not paid close attention to it." He was noted to be a former smoker for 13 years up until quitting on 1/1/10. Invasive melanoma was diagnosed. Dr. Rojek indicated no palpable lymphadenopathy on exam, noting the cancer was at Stage IIB at a minimum based on depth of invasion, which would be reevaluated after excision and skin graft. A PET scan and lab testing were ordered, and Petitioner advised he already had a scheduled ENT appointment. The 2/21/23 PET scan was consistent with melanoma. (Px3A). Petitioner saw Dr. Agarwal at U of C Head and Neck Surgical Clinic on 2/22/23 and advised he'd had the left occipital scalp lesion since 2020, but it changed in November 2022 and became raised and painful. Wide excision of the lesion, lymph node biopsy, and reconstruction were recommended. On 2/24/23, surgeon Dr. Gooi presented a surgical plan with separate removal and skin graft procedures, and noted Petitioner wanted to schedule surgery after he returned from three weeks out of town. On 2/28/23, Dr. Olson noted the PET scan showed no disease beyond the scalp lesion. On 3/28/23, Dr. Agarwal performed a wide local excision of the lesion area measuring 5 x 6 cm on the left occipital scalp. A biopsy of local lymph nodes was also performed, and an acellular dermal matrix was applied by Dr. Gooi. (PX5C-D, Px3A). Petitioner was noted to have a family history of his mother

having colorectal cancer and his father having: "Cancer – non-melanoma skin." He was discharged from the hospital on 3/29/23 and limited to 10 pounds lifting pending follow-up. (Px3A).

On 4/11/23, Petitioner returned to Dr. Olson. The lesion was described as a 6.4mm invasive melanoma with no involved lymph nodes or distant metastases. Given a 20% to 25% chance of recurrence was noted, immunotherapy was recommended to reduce this risk. On 4/12/23 Dr. Gooi performed a second surgery involving a flap rotational (vascularized graft). The primary defect was measured as 28 cm and secondary defects measured 11x1 cm (x4) for a total of 44 cm. (PX5E-H, PX3A). The total surface area of the tissue rearrangement was 73 cm. Petitioner was discharged on 4/14/23. On 4/21/23, Dr. Gooi held Petitioner off work for a month. He still had staples and he was advised his marked scalp numbness would likely last for at least another few months and there would always be some residual numbness. On 4/28/23, Petitioner complained of a sensation on his left ear and some ongoing numbness. The remaining staples were removed, and Petitioner was released to return to work as of 5/1/23. Petitioner also received his first Keytruda chemotherapy infusion on 5/1/23. (Px3A).

On 5/3/23 Petitioner advised the U of C hematology/oncology department he had been diagnosed with blood clots (DVT) in the left calf at Edward Hospital and a blood thinner was prescribed. Petitioner advised that he was going to fly to Arizona in a couple of days and planned to do so no matter what, which the doctor agreed he would review after taking Eliquis for a couple of days. On 5/23/23, a history of factor V Leiden was noted though not confirmed. On 5/26/23, Dr. Gooi noted ongoing healing and mild ongoing numbness. Petitioner wasn't planning to return to work until November. He was to follow up with Dr. Agarwal in July. (Px3A). Petitioner was also held off work by Dr. Olson due to the blood thinner he was taking as a complication of his cancer, and the plan was to re-evaluate him for an 8/1/23 light duty release. (Px3B, p. 41). On 6/28/23, Petitioner advised Dr. Agarwal that he had continuing numbness on the left side of his head and scalp with sensation of a foreign body. He was limited in laying on or putting pressure on the left side of his head, though it was much improved. An 8/1/23 PET scan showed patchy upper lung opacities, suggesting inflammation from treatment, drug reaction or infection. Petitioner requested a release to light duty work on 8/5/23 as he was unable to resume full duty while on blood thinners. The clot was noted to be a "provoked DVT" and blood thinners were planned for six months post-DVT. (PX3A). An 8/9/23 letter was issued holding Petitioner off work through 9/12/23. Despite this, on 8/17/23 Petitioner gave a history of returning to work for one day and getting very fatigued being outside in the hot sun, so he hadn't worked since. Ativan was prescribed for anxiety relative to the melanoma diagnosis. On 9/12/23, Petitioner saw Dr. Olson, indicating he wanted to discontinue the blood thinner and to return to light duty work with no firefighting given ongoing blood thinners. On 9/12/23 it was again noted he had anxiety with the cancer diagnosis. Dr. Olson believed at least 6 months of blood thinners was typical for his condition, but there was some uncertainty around Petitioner's provoking factors and so he opined 3 months was reasonable. (Px3A & B). 9/12/23 repeat PET CT compared to 8/1/23 testing showed an ascending colon "focus of activity" that could represent premalignant or malignant colonic polyp. It otherwise showed no cancer or recurrent melanoma. Petitioner continued to receive Keytruda immunotherapy treatments. (Px3B). Also noted was very subtle activity within a left level 2 lymph node and a "left occipital node (might) be inflammatory but metastases is also in the differential" and should be checked in follow ups. The blood thinner was discontinued, and Petitioner was released to return to work as of 9/15/23. (Px3B) (Px3B)

A 10/24/23 PET scan revealed activity within Petitioner's ascending colon, possibly representing a premalignant or malignant colonic polyp, and colonoscopy was ordered. Petitioner saw Dr. Agarwal via Zoom for a post PET review on 1/3/24. He reported improvement with the abnormal sensation and was now able to tolerate pressure on his scalp. He was advised to follow up in person in about 2 weeks. (Px3B). On 1/16/24, PET scan was again performed with no apparent tumors. Dr. Agarwal advised him to follow up with medical oncology and dermatology. Petitioner saw Dr. Olson via telemedicine on 1/23/24, who noted he'd received his 7th chemotherapy cycle and was overall feeling well and that, while no recurrent melanoma was indicated, non-

specific lymph node findings ("which are likely reactive") were seen on the last PET and testing should be repeated. Petitioner's 9th and final Keytruda (pembrolizumab) infusion was performed on 4/9/24. (Px3B & C). On 7/15/24, Dr. Olson noted Petitioner was overall doing well with no new changes. PET testing was ok and repeat PET scans were planned every 6 months. The last noted scan was on 10/7/24. (Px3C & 3D). Petitioner last treated at U of C on 1/13/25, advising Dr. Olson he planned to retire in four months and move to Arizona. The doctor advised him to continue getting PET scans every six months and that he would help him find an Arizona oncologist. (PX3D).

Petitioner testified that he developed the left leg pain and swelling shortly after the second surgery, and after being diagnosed with DVT he remained on a blood thinner per Dr. Olson for about 4.5 months. He testified that, by statute he wasn't allowed to return to work while on a blood thinner, and he requested to return to light duty because he wanted to stop using his sick time. He returned to work on 8/4/23, running some errands for a mechanic and pulling some weeds, when he developed some breathing difficulty that was "kinda new." He spoke to a nurse at Dr. Olson's office and was again taken off work through 9/13/23. He then performed light duty for a couple of days after returning to work before returning to full duty. He was paid while he was off work, receiving the same amount as if he had been working, minus any overtime. He had accumulated 136 sick-time credits that he depleted, as he wasn't earning any additional sick time while off work. Sick time was deducted in 24 hour increments, "complete shifts." He did also choose to use some vacation days. For all of his time off work he used sick and vacation time. Taxes were deducted. To his understanding, Blue Cross/Blue Shield paid all of his medical bills other than his deductibles and co-pays.

Currently, Petitioner continues to have some head and scalp numbness, as well as constant numbness and tingling in the left ear. His scar can become painful at random times, maybe once or twice a month. He has a bald spot on the back of his head. The condition has impacted him mentally. He initially was upset thinking he would need to retire early and felt lost about his future path. He didn't want to go through a disability pension hearing and didn't know if he could. He does plan to retire as of 5/26/25 and has applied for his retirement pension. He uses sunblock or a ball cap if outdoors on sunny days. His mother has had colon cancer. None of his three siblings or their kids have any cancer diagnoses. He has no relationship with his father but was told by his son that his father has had skin cancer. He agreed he must have told this to his doctors, but that it is "just hearsay" and he has no real certainty. Petitioner discussed his career in fire service with Dr. Cochran but couldn't say if his wife spoke to the doctor. He smoked between ages 16 to 26, then again in 2007/2008 for about a year, maybe a ½ pack a day. He hasn't smoked since other than occasional cigars. He did drink alcohol and did so heavily for several months in 2020 when he had a mental health episode that required treatment. He no longer drinks. He's been at a consistent weight for his adult life. Petitioner identified the photos contained in Px5 as pictures (A through I) of his tumor area from post-biopsy to post-reconstructive surgery.

On cross-examination, Petitioner testified he hasn't followed up at U of C since January 2025 and is trying to get into the Mayo Clinic in Arizona for future treatment. Dr. Olson was the head of his oncology team. He never treated with Dr. Cochran and is not aware of her medical specialties, he just knows she evaluated him at his attorney's request. He didn't personally provide Dr. Cochran with any documents.

Petitioner testified that fire engines are sometimes sent with an ambulance for serious EMS calls, but typically they are not sent for EMS calls. Approximately 80% of the fire station calls involve EMS versus 20% fire calls, and while it varies from year to year and station to station, Petitioner testified he is generally involved in up to 12 fires per year. Not all fires require suppression and overhaul, but all structural files do. Rescue is the primary task, then determining whether an offensive or defensive approach to the fire is appropriate. At a fire, Petitioner could be participating in fire suppression or could be doing the staging. He couldn't say how many fires required hours of suppression over his career, and he didn't advise Dr. Cochran that he did know this. He did not always participate in post suppression overhauls. Petitioner testified the PPE gear used at a fire protects

from particulates and has always been provided by Respondent. At times, he doesn't use some aspects of the gear by choice. The SCBA, similar to a scuba setup, provides fresh air out of a bottle into a fitted mask, which are tested yearly for proper fit, and he has always had a proper fit. A tank usually lasts 20 minutes or more and is rated for 45 minutes. An alarm sounds when a tank is low, which tells him to exit the building. He has never had a tank completely run out but has used more than one tank at a fire. He has used a Nomex hood since he started working for Respondent, which protects against a lot of things, including heat, fire by-products, and particulate matter. The hood covers the area of his head where he had the melanoma lesion. Firefighters have two sets of gear, one being used when the other is being washed after a fire, and the clean gear hangs in lockers in the apparatus bay. Petitioner could not recall exactly when the vehicle exhaust vacuum system was installed.

Petitioner is not aware of any spreading of his melanoma to other locations. He did tell a doctor that his wife first noticed a dark spot on his head a year or two prior to 2023, but he couldn't recall the exact year. Petitioner agreed he told Dr. Gooi on 2/24/23 that he was a heavy drinker prior to 2020, and that he had smoked a pack a day for 10 to 15 years. Petitioner is Caucasian and blue-eyed. He has hunted for a couple days per month during deer season for about 4 years and goes fishing a couple times a year. He does some hiking in Arizona, where he's owned a home since 2017, but less than once a month. He spends about 30 days a year there. He uses sunscreen with outdoor activities, but not on his scalp for these activities – he uses a hat. Petitioner agreed he was off work from 2/8/23 to 9/11/23, other than the one day he went back, and returned to work on 9/12/23. He provided all of his off work and light duty notes to Respondent. He agreed he took three weeks of vacation time to go out west shortly after he discussed surgery with his doctor on 2/28/23, using 18 to 21 days of vacation time for this trip, and had the surgery on 3/28/23 after he returned. Again, all medical bills were paid, other than his deductibles and co-pays, by Blue Cross/Blue Shield. He hasn't received any unpaid medical bills. After initially returning to light duty in September 2023, he went back to full duty but has continued to work full duty as a firefighter since. He has received all of his Fire District / union contract raises. Petitioner testified he does not plan to work after taking his age-based retirement. He has had no medical restrictions since September 2023. Petitioner confirmed that per Dr. Olson he is supposed to undergo routine PET scans to check for cancer, and he's had 3 in the last year that showed no sign of melanoma recurrence. Petitioner couldn't say how often he has been involved in fires involving chemicals or which chemicals he may have been exposed to, and didn't tell Dr. Cochran how often he had, but he has fought such fires. On redirect, Petitioner couldn't say how many structural fires he has fought over his career but has had some years with more than 12. There are no doors on the apparatus bay gear lockers. He was told he did not have cancer in the lymph nodes.

Chief John O'Connor testified he has been a firefighter for about 27 years, Fire Chief for about 6 years, and is technically Petitioner's manager. He testified that elements of fire combustion include gases and smoke which can contain particulate matter, as well as carcinogens. The PPE, including, SCBA, helmet and hood, are used to protect from heat and particulate matter. There is a facial opening. The PPE gear must be worn for any "IDLH" – immediate danger to life and health, i.e. a fire scene. SCBA provides clean air and prevents inhalation of contaminants and superheated air, including carcinogens. During overhaul, a four-gas meter monitors air quality, and once deemed safe, firemen can get remove the SCBA. Chief O'Connor estimated this meter testing began about 15 years ago. Before metering, an officer at the scene would determine when firefighters could remove their masks. Of the two types of response calls, EMS and fire, the Chief testified that out of 11,500 calls in 2024, 80-85% were EMS medical emergencies, while the rest involve fire alarms, fires, water rescue, hazardous materials, and car accidents ("we get called for just about everything nowadays"). 90% of commercial fire alarms are false alarms. This includes structural fires, of which there were about 20 "full stills" in 2024, 9 in 2023. A "still alarm", i.e. a fire call and is elevated to a full still when personnel are on the scene and confirm a structural fire that requires suppression and overhaul. All six fire stations would respond to a full still fire, with firefighters working in various capacity. Firefighters work 24 hours on, 48 hours off, and generally only on-duty firefighters respond to calls. The Chief agreed that Petitioner would not have responded

to every full still structural fire. He estimated that the 20 full stills Respondent had in 2024 constituted less than 2% of all calls. While Respondent deals with commercial and residential structural fires, most are residential.

Dept Chief Blaskey is the FOIA officer and responded to Respondent counsel's request for incident type building fire responses for last 5 years for Petitioner (Rx5), including all types of fires, not just full stills. The PPE that is stored in lockers should all be clean, having been washed using commercial gear extractors, which is a high powered washing machine. These were installed at each station at least 15 years ago. The vacuum ventilation system, Nederman, was installed in the stations 15 to 20 years ago. It attaches to the exhaust pipes by magnets and are triggered to go on when a vehicle is running. The fire station has never had any OSHA violations for air quality. When they have to leave on a call, the doors open, and the ventilation system is then activated. Sleep and living quarters are separated from the apparatus bay by a metal door, and there should be no particulates or carcinogens in the living areas. Firefighters are in the living area when not working. Any work is done in the bay itself, and there is limited particulate matter in the bay. The mitigation systems have gotten better and better over time. They wash the gear because they learned carcinogens can remain on it. The Chief agreed Petitioner's payroll records (Rx2) showed Petitioner received his full wages while off work, but he could not tell from the documents themselves whether Petitioner utilized his sick time. Other than a short period of light duty, Petitioner has since been working full duty without restrictions. Live fire training is very infrequent, maybe once or twice a year, given the lack of facilities for this, and now typically involves hay or pallet smoke. PPE would be utilized for this.

On cross, the Chief acknowledged his understanding was that Petitioner used sick time, and some vacation time he already had scheduled, while off work for melanoma treatment, but again agreed Rx2 doesn't say one way or the other. Any live fire training, involving a structural burn, occurred very early in their careers, and only twice for the Chief in his career. Training since then has involved burning hay and pallets within the structure, not the house itself. There is yearly "fit" testing for firefighters by trained personnel for their SCBAs to confirm perfect seals. Facial hair is not allowed for this reason. His understanding is they confirm a good seal and that no particulates or carcinogens can get in, but again he is not involved in the fittings. He reiterated that about 2% of all calls involve full still situations, which do not include car or dumpster fires. For a fire to be considered structural, the structure itself must be on fire. Chief O'Connor testified that Dept. Chief Blaskey does a great job with FOIA requests and doubted that any fires Petitioner may have been involved in were not listed in the response (Rx5). Blaskey took the information directly from Petitioner's own fire reports and compiled them based on incident type for any type of fire he responded to, as that is what Respondent attorney's FOIA request asked for. The document does not show the full amount of time Petitioner may have spent at a fire, while the actual fire report would have this information and more.

Petitioner's counsel retained internist and occupational medicine expert Dr. Cochran to provide an opinion as to the causal connection of Petitioner's melanoma to his employment. In her 7/9/24 report she noted Petitioner's wife first noticed the scalp lesion at least 5 years prior. Petitioner advised he performed fire overhauls without his SCBA mask until about 6 years prior, when he was required to leave it on until a carbon monoxide detector indicated it was safe to remove it. Dr. Cochran opined this procedure did not mitigate exposure to class 1 carcinogens during overhaul. She cited a University of Miami symposium in February 2024 where it was stated that wearing fire PPE gear over 4 hours increases the risk of cancer. Petitioner's gear is stored in an open storage locker at the firehouse, where he would be at for 24 hours every 3 days when he is not out on calls. Petitioner fought both dumpster and structural fires, and Dr. Cochran noted dumpster fire involve all manner of exposures depending on the items in them. Petitioner told Dr. Cochran the walls of the fire station engine apparatus area were black and sooty and had to be washed from time to time. Diesel exhaust was not vented at the start of his career. Petitioner reported having sooty nasal discharge for about 24 hours after fighting a fire, and Dr. Cochran stated that such discharge was also noted at the Miami symposium to have been found to have an increased incidence of cancer. Based on studies Dr. Cochran cites, fire stations are contaminated by two class

1 carcinogens. She documents a questionable history of a first degree relative of Petitioner having melanoma which wasn't confirmed. Petitioner was a pack a day smoker for 10 years before quitting in 2004, other than occasional cigars. He was a social drinker until quitting in 2020. Petitioner denied any history of blistering sunburn or tanning bed use. (Px6).

Dr. Cochran indicated that the standard causation analysis for the American Academy of Occupational and Environmental Guidelines initially involves exposure and biologic mechanism connection to the specific cancer. Exposure involves things "could be carcinogenic for the specific cancer diagnosed and other risks or conditions predisposing of or causative of cancer." She opined Petitioner was at an increased risk for melanoma skin cancer due to his "longitudinal carcinogenic exposures while firefighting", as there are at least two dozen class 1 and class 2a carcinogens that firefighters are generally exposed to as defined by the International Agency for Research in Cancer (IARC). Citing a number of peer-reviewed medical literature articles from the early 1990s to the present regarding exposures at fires, overhauls, on PPE, and in fire stations, Dr. Cochran stated that current studies show incomplete protection with PPE with absorption through the skin primarily at the neck, as well as inhalation. Dr. Cochran opined that current understanding is that cancer is not a "bad luck" scenario, but rather that carcinogenesis is "a complex process that occurs at the molecular level and involves carcinogenic exposure, inflammation, and oxidative stress." There is one note indicating the medical literature shows that PAHs (Polycyclic Aromatic Hydrocarbons) are a risk factor for all types of cancer in firefighters due to exposures at the fire scenes, as well as substances carried on PPE and into the fire station. As to melanoma specifically, Dr. Cochran indicates there are multiple studies showing firefighters have increased risk of melanoma due to regular carcinogenic exposure. She states that a study by *Pukkala* ("Cancer Incidence Among Firefighters: 45 Years of Follow-up in Five Nordic Countries") indicates: "The epidemiology of melanoma is complex, and individual risk depends on sun exposure, host factors, and genetic factors, and in their interactions as well." UV is noted as the having the main impact, with Dr. Cochran indicating it found other environmental factors, such as chemical exposures, may increase the risk of melanoma and warranted further study. She also referenced that they found a "specifically significant excess risk for skin melanoma at the 95% confidence level", encompassing ages 30 to 49. Dr. Cochran then referenced other non-peer-reviewed studies such as *Bates* ("Registry-based case controlled study of cancer in California firefighters", *American Journal of Industrial Medicine*, 2007), which she states referenced other studies and concluded "melanoma with an odds ratio of 1.50 at the 95% confidence level", and *Sama* ("Cancer Incidence among Massachusetts firefighters", American Journal of Industrial Medicine, 1990). Dr. Cochran also referenced statistically significant incidences of melanoma in firefighters in studies by *Jalilian* and *Harris*, due to carcinogen exposures. Dr. Cochran determined from the literature that a higher incidence of melanoma in firefighters was due to carcinogenic exposure occurring during fire suppression, overhaul, and in the firehouse with PPE residuals, along with any diesel fumes. Dr. Cochran opined that while melanoma can occur when a congenital nevus (mole) undergoes malignant transformation, with severe sunburn resulting in future melanoma, and exposure to sunlight leading to melanoma over time, her understanding is that Petitioner had none of these risk factors. Her review of peer reviewed literature supports carcinogenic exposures as statistically significant for melanoma in firefighters with exposures ("well known and documented"), that he has no other significant melanoma risk. She believed there are no genetic conditions or genes that are causative or risk factors for melanoma. As such, Dr. Cochran concluded Petitioner contracted the cancer in the course of his employment: "The disease is peculiar to the claimant's employment by its causes and the characteristics of his manifestations for the conditions of the employment such as the PPE and class 1 carcinogens being present in the fire station results in a hazard which distinguishes the employment and character from employment generally. The employment creates a risk of contracting disease in a greater degree and in a different manner than in the public generally." (Px6). Multiple addendums were attached to her report referencing and attaching various medical literature. (Px6A).

Dr. Shah, board certified in internal medicine, oncology, and hematology, reviewed the evidence in this case and provided his opinions at the request of the Respondent (report undated). After reviewing the relevant

medical records, a fire log run report, consumption and mask fitting tests, and Dr. Cochran's report, he confirmed the diagnosis, that Petitioner was treated appropriately, and was likely cured. He documented Petitioner as a former 10-15 year smoker, alcohol use of 22 drinks per week, and that he was reported to be overweight. He related known melanoma risk factors as fair complexion and family history of skin cancer, noting histories of colon cancer in his mother and skin cancer in his father. He also documented Petitioner as a 23 year firefighter with about 10 hours per year on active fires. Noting Petitioner had known melanoma risk factors of fair complexion, family history of skin cancer, and alcohol use, Dr. Shah opined these factors were the cause of Petitioner's melanoma. He indicated alcohol consumption is associated with a small to modest increase in melanoma risk in areas less exposed to UV rays such as his scalp, as it may increase skin vulnerability to UV rays (Citing *NIH GARD index* 2016). He opined that many cancers are thought to be inherited or random genetic mutations without definitive cause origins. For work exposure to play a role in melanoma "you must assume demonstration of both a statistically significant impact on incidence or mortality between exposed and non-exposed, and for different exposure, and there is no such data for invasive melanoma." Citing a *NIOSH* study of firefighters, updated in 2016, there were increased rates of certain non-skin cancers, but not for invasive melanoma. Dr. Shah further stated that recent genetic studies suggest more random causation and that probably more than 66% of cancers aren't preventable based on the random expression of mutations (*Vogelstein*, in *Science*, 3/23/17). He stated: "Mr. Kozak's work was not the prevailing factor in the development of his cancer - his skin tone and family history were." Dr. Shah also opined that Petitioner's exposure time as a firefighter is not in correspondence with increased risk of malignancy based on the fire logs, which show the types of calls he worked on, and his time spent on them. He indicated "A thorough review of relevant cancer studies shows no risk for development of invasive melanoma due to exposure as a firefighter." Disputing Dr. Cochran's opinion, Dr. Shah indicated there was no data to support Petitioner's melanoma was caused by fire exposure, and statistically there is no evidence to support that claim. He opined there are no scientific studies that support an increased risk of melanoma due to firefighting exposures. (Rx3, Ex. 2).

In her rebuttal report (undated), Dr. Cochran questioned Dr. Shah's conclusions regarding Petitioner's firefighting experience, including his knowledge of suppression, overhaul, and salvage. She states that there is no medical literature quoted in support of his conclusions that fair skin, family history, and alcohol use caused Petitioner's melanoma and thus was not medically correct. As he never met Petitioner, she questioned how Shah knows how "fair" his skin was, and that he had no history of blistering sunburns. She reiterated that given no gene had been identified as causative of melanoma, the Petitioner's family history is not relevant, and Dr. Shah cited no medical literature in support of this conclusion. Dr. Shah cited no literature in support of his conclusion that alcohol played a role in the melanoma. Dr. Cochran notes the NIH GARD study, i.e. Genetic and Rare Diseases, literature may be supportive of Dr. Shah's conclusions as to rare diseases, but that melanoma is not a rare cancer. She also disputed this based on recent monographs, including IARC, indicating the process of carcinogenesis. She again cited the studies from her last report supporting statistically significant impact of firefighting on melanoma above 1.0 incidence. Dr. Cochran states that "there are a total of 19 peer reviewed articles showing an increased risk of melanoma in firefighters." She agreed the Daniels study cited does not show an increased risk of melanoma, "but that frequently occurs in medical literature for a variety of reasons including study design, database use, criteria of statistical analysis, and statistical analysis noted in the study design. There are other studies as I have quoted do indeed show an increased risk and is not a single peer-reviewed medical literature, many studies including, as I mentioned above, meta-analysis studies." Dr. Cochran argues that a number of studies cited by Dr. Shah in support of his opinions (*Musk*, *Eliopoulos*, *Beaumont*, and *Heyer*) are outdated at over 30 years old and this cannot be relied upon, and she noted the citations were not complete, so she was unable to review the reports. (Px7).

In response, Dr. Shah issued an additional report in rebuttal of Dr/ Cochran. He stated that the issue of a causal connection between firefighting and melanoma is "complex and multifaceted", but that while firefighters are

undeniably exposed to many environmental hazards (including smoke, soot, PAHs, diesel exhaust, and UV radiation during outdoor daytime work), the assertion that there's an elevated risk of melanoma "lacks robust, consistent, and conclusive evidence." He opined that a direct linkage remains contentious and remains speculative. Dr. Shah again opined that melanoma is primarily associated with UV exposure, genetic predisposition, skin type, and intermittent intense UV exposure. He opined that while occupational exposure, relevant in some contexts, is not a predominant factor unless it directly correlates with increased UV exposure. While there are studies with varying methodologies and conclusions, a thorough examination of them reflects inconsistencies and limitations in making the link. He again criticizes Dr. Cochran as referring to "cancer" as a singular entity versus specific melanoma risk factors, and "I have refuted her inaccurate assumptions below with references." As an example, he cites the *Bates* and *Guidotti* studies as reporting an elevated cancer risk in firefighters, but they fail to establish a direct causal link. He notes some studies pool multiple cancer types, diluting specific melanoma results. Off-duty firefighter activities are rarely accounted for, along with geographic and climatic variations influencing UV exposure. Dr. Shah opined that "a hallmark of carcinogenic causality is a dose-response relationship, which is not consistently observed for melanoma among firefighters." The doctor also referenced screening bias, i.e. the fact that firefighters often have health screenings and thus have higher detection rates versus the general population, and publication bias, meaning studies with positive findings are more likely to be published. Dr. Shah cited the *Bigert* ("off duty recreational activities may account for increased melanoma incidence"), *Pukkala* ("study reported inconsistent melanoma risks among firefighters across countries, undermining a causal link"), and *Heyer* ("highlighted the role of recreational UV exposure in melanoma cases among firefighters, unrelated to occupational factors"). Dr. Shah goes on to opine that: 1) chemical exposures, such as PAHs and benzene, are not known to induce melanoma-specific mutagenesis, 2) heat stress can affect cellular repair but its role in melanoma pathogenesis is unsubstantiated, and 3) occupational UV exposure for firefighters is sporadic and unlikely to surpass established thresholds for melanoma risk. Meanwhile, other cancers, such as bladder and lung, have well-documented associations with firefighting. Dr. Shah reiterated his prior causation opinions. (Rx3, Dep Ex. 3).

The deposition of Dr. Cochran was taken by the parties on 11/5/24. She testified she is board certified in internal medicine, board eligible in occupational and environmental medicine, meaning she has completed the requirements but hasn't taken the necessary exams. She has diagnosed melanoma several times in her 40 plus years of practice, bur refers such patients out to appropriate specialists for treatment. As noted in her CV, part of her practice since 2009 involves analyzing the causation of various diseases firefighters are exposed to. She is licensed in Maryland and Florida and is more or less retired from practice. She was retained by Petitioner's counsel in this case. She interviewed Petitioner and his wife, discussed with him his duties and common practice of wearing protective gear and information on staying at the firehouse. She reviewed the medical records and a number of peer-reviewed medical studies, which "requires rigorous assessment by various people" before publication. She issued a 7/9/24 report, noting she utilized the American College of Occupational and Environmental Medicine guidelines for analysis. This required determining exposure considered to be carcinogenic that firefighters are routinely exposed to, then whether such exposures could cause the type of cancer at issue and whether there is biologic certainty. She testified that cancer is a change in the DNA and RNA sequencing caused by an exposure and the cells then replicate. Dr. Cochran also testified that there used to be little melanoma literature, but there's been an explosion of studies and evaluations for different carcinogens firefighters are exposed to and the cancers they get, and they show there's an increased incidence of risk or melanoma in firefighters. (Px1).

Petitioner had melanoma based on pathology testing, and it was a large stage II melanoma based on 6.5mm depth, and the deeper it is the more likely it is to reoccur. A melanoma recurrence is usually fatal. She testified that a number of epidemiologic studies show that the risk is significantly and statistically higher for firefighters, four or five she listed in her initial report support an increased risk of melanoma for firefighters. This includes a "meta-analysis" by Jalilian, which looked at 48 studies and combined them in a statistical analysis. Dr. Cochran

testified that studies she cited show two Class 1 carcinogens, particulate matter, and polycyclic aromatic hydrocarbons (PAH) that are present throughout the fire station. Her testimony then is unclear to the Arbitrator, but she seems to be testifying they are likely present in not just the engine bay where they start diesel vehicles but throughout the station, so they are exposed the entire time on duty (citing the Sparer, and Glass and Fent, studies). She did not perform testing at the Lockport station itself, but this doesn't change her opinion of the carcinogen presence. She stated that PAH is the products of combustion of diesel fuel, and since all firetrucks are diesel, there is PAH in the fire station. Studies also show carcinogens are brought into the station on the PPE gear. Carcinogens at the scenes of fires have been studied for decades and are listed in her report, and there are 24 specific ones listed for structure fires, which are predominantly what firefighters deal with. Petitioner advised he often had a dark sooty nasal discharge after fires, which supports an inhalation exposure, and "I've yet to have a firefighter tell me that they didn't have a sooty discharge or were coughing up soot." Thus, they have clearly been exposed to carcinogens. Firefighters have 8 of the 10 mechanisms, per IARC, of cancer. Dr. Cochran testified that exposure to carcinogens may and frequently can cause changes in RNA and DNA sequencing at the molecular level, which the body can repair in some cases and cannot in others. It may stay dormant or replicate to create a tumor. She listed a number or studies which show what firefighters are generally and typically exposed to but cannot say definitively with Petitioner. (Px1).

Dr. Cochran's understanding is Petitioner was a "social drinker" prior to quitting in 2020 and opined that social drinkers don't have enough alcohol ingestion applicable to any cancer. She testified the peer-reviewed literature on smoking indicates prior smokers have less of an incidence of melanoma, so it wouldn't be causative of melanoma. As to family history, she testified there is no gene that's been identified as causative of melanoma, so it has no relevance here. Petitioner reported he would at times stay overnight at the firehouse, was at active fire scenes, and doing fire overhauls. Dr. Cochran opined he was exposed to carcinogens in these ways, and that this led to his development of melanoma. UV exposure is a risk factor for melanoma, and people who work in the sun with skin exposed have significant exposure, but this isn't applicable here. Skin blistering from sun increases the risk further, but Petitioner has no such history. The literature she relied on in her causation opinions are in appendices 2A through 2D in her report. (Px1).

Dr. Cochran prepared a second report in rebuttal to the initial report of Dr. Shah. As to Petitioner having a "fair" complexion, she argued that people can go from albino to dark skin, and given Shah had never seen Petitioner, she questioned his conclusion that Petitioner was fair complected. Even with fair skin, that would be related to UV exposures, and there's no evidence Petitioner had blistering sunburns. Family history is also not relevant here given no peer reviewed medical journals indicating a gene associated with melanoma, and the statement his father had a lesion removed from his nose doesn't reflect a melanoma, which would have involved significant nose removal, so melanoma is unlikely. Dr. Cochran testified there is no peer reviewed literature cited by Dr. Shah supporting alcohol consumption or smoking as causative of melanoma. His reference to an NIH study involved a Genetic and Rare Disease index, and she wouldn't consider melanoma to be a rare disease. In her reading of the Daniels study he cites, Dr. Cochran noted reference to other cancers, not melanoma. There's a large number of cancers, so each study is different in its focus. The Jalilian study is generally accepted in the medical community that firefighters have these exposures, and so its starts with that premise and goes from there. Multiple swipe studies confirmed the presence of carcinogens in firefighter's gear. (Px1).

On cross-exam, Dr. Cochran acknowledged she is board eligible in occupational and environmental medicine and psychology, meaning she hasn't taken the certification tests. She has dealt with cancers as a board certified internal medicine physician, including diagnosing melanomas. Following such diagnoses, she refers such patients out for treatment. She has advised such patients in follow up to advise on options and the current state of thinking for a particular tumor. She is very limited in seeing patients since the covid pandemic. Most of her practice now involves Social Security disability evaluations and medico/legal opinions in internal and

occupational medicine, including TBI, cardiology, orthopedic, rheumatology, and pulmonary cases. She presented to the WILG (Workers' Injury Law Group) attorney organization this year about "cancer in firefighters which is epidemic", involving multiple cancers, and later in the year to their firefighter task force on cancer. Petitioner's counsel in this case contacted her to determine if the Petitioner had a case. She spent 4.25 hours on the case, and more for the supplemental rebuttal report. She spoke with Petitioner and his wife by phone and reviewed his medical records. She reviewed Petitioner's fire run sheets for her second report. She didn't recall if she knew the fire station set-up. She reviewed no records of air testing at the station and didn't know if any was done. She didn't review mask testing results. She couldn't say how many fires or hours Petitioner fought fires or performed overhauls in a given year, and it's not in her report. To her understanding, SBCA oxygen tanks last for 20-30 minutes and are not work during overhauls, though they are not removed until carbon monoxide levels are safe. A safe level of carbon monoxide, however, does not mean carcinogens and other particulate matter are not still circulating in the air. Petitioner advised her he took off his mask during overhauls. Petitioner had a remote history of smoking and had quit 20 years prior, plus Dr. Cochran is not aware of studies linking remote smoking to melanoma ("I've had other cases of melanoma cancer in former smokers and I believe that the risk decreases if you're a former smoker"). She didn't do research into alcohol use as a causative factor but has no references which state it is – "I have not reviewed all the literature so I can't have an opinion." Dr. Shah cited no literature supporting his argument, so she didn't have a citation to review. (Px1).

At this point, questions from Respondent's counsel referred to whether Dr. Cochran reviewed all of the studies cited by Dr. Shah, with counsel indicating there were 14 citations, and Dr. Cochran questioning this as far fewer and with incomplete citations to significantly older research. She was familiar with the Daniels study. Dr. Cochran ultimately indicated she didn't see the list of Shah's literature references. Dr. Cochran did not see in Petitioner's medical records that being blonde haired and blue eyed was a risk factor, but she agrees this could be seen as having a fair complexion. As to whether a family history of cancer could predispose Petitioner to skin cancer, Dr. Cochran testified it depends on the cancer. Simply having a family history of cancer does not predispose one to melanoma. She had a prior case where there was an issue of whether a close family history of melanoma predisposed one to melanoma, and she could not recall what the one article she knew of determined on this issue. Petitioner's wife first noticed his lesion 5 years prior to their discussion, but she did not recall seeing Petitioner's 2/27/18 medical report referencing his difficulty with alcohol. She reiterated that, based on peer-reviewed medical literature, Petitioner was exposed to carcinogens as a firefighter every time he works at a fire or was at the fire station. She could not say how many fires or hours he was exposed to structural fires in his career, nor whether such fires were at residential versus commercial buildings. She assumes PAHs came off of the diesel fuel burning at the fire station, as even with exhaust systems there are times, starting out or backing in, where there is open exhaust. The exhaust system is in place to remove the exhaust in the building. Whether alcohol is a carcinogen is "debatable", though Dr. Cochran notes that the IARC monograph lists it as one ("so I'd have to say yes, but, I mean, I think the jury is out on that in terms of how much you drink and what type of alcohol you drink"). IARC also lists tobacco and UV rays as carcinogens, as well as some processed foods. She has no way to know what Petitioner's UV exposure has been. However, just walking in the sun, based on the number of people in the US and the percentage of melanoma, is not a significant factor. (Px1).

Carcinogenesis is the process of normal cells becoming cancerous, and its complex. The stress of life does not cause this. Firefighters have oxidative stress simply from being firefighters, which is supported by the literature and why coronary artery disease and hypertension are presumptive in many states, due to alarm bells, fight or flight response, carrying heavy equipment, etc, as well as the actual firefighting and overhaul. Dr. Cochran agrees the articles she cites indicate carcinogens causing cancer in general, not specifically melanoma ("They say it causes cancer in general and it's part of the carcinogenesis process"). She testified she has cited 19 articles which show an increased risk and incidence of melanoma. The *Jalilian* study is a meta-analysis, which means it is an aggregate of a number of separate studies. The party preparing a meta-analysis study does get to pick and choose the articles they want to analyze and indicate why they chose the ones they did. She would not

dispute that the study is Iranian, not American. She doesn't know how many of the selected studies in it are American but testified it doesn't make a difference. She can't say if an Iranian firehouse is different than the one in Lockport or exactly what cohort was studied. She agreed it may relate to a number of different cancers, and Dr. Cochran would have bolded references to melanoma. In statistical analysis, 1.0 is the general population, and numbers above 1.0 show an increased incidence or risk for a particular condition or occupation. 1.2, for example, would mean a 20% increased risk, which is beyond the two standard deviations confidence interval of 5% (1.05). The *Pukkala* study is Nordic, and that country has a lot of sun exposure, which should be noted in that study. The monograph published in *Lancet Oncology* by *IARC* showed that there are 10 mechanisms of cancer, and firefighters check 8 of the 10 mechanisms. Dr. Cochran agrees that of the eight cancers, melanoma is not one of them, so it doesn't support firefighting as the cause of melanoma. (Px1).

On redirect, Dr. Cochran testified that the *Jalilian*, *Pukkala*, *Tsai*, and *Glass* studies are consistent in showing an increased risk on melanoma with firefighters. On recross, the doctor agreed three of these studies are from outside the US, but testified there are many studies within the US. (Px1).

Board certified hematologist and oncologist Dr. Shah testified via deposition on 3/5/25. He currently practices in Northwest Indiana and serves as a professor of medicine at Indiana University School of Medicine. He treats patients with melanoma in his clinical practice and authored an article on advanced melanoma in May 2018. He was retained by Respondent in October 2024 to perform a record review and provide a causation opinion regarding Petitioner's melanoma diagnosis, issuing his initial report on 10/14/24. (Rx3, Resp Ex. 2). He reviewed records including documentation from Duly Health, a fire log run report, consumption and mask fitting tests, and Dr. Cochran's 7/9/24 report. Per his review of the records, he documented Petitioner as a former smoker, alcohol use of approximately 22 drinks per week, being overweight, and a family history of colon cancer and skin cancer on his father. He was seen by a dermatologist in February 2023 for a scalp mole, which was biopsied and diagnosed as melanoma. A PET/CT scan did not show any evidence of spread, and Petitioner subsequently underwent curative surgery involving wide excision and sentinel lymph node biopsy. The final staging of the melanoma indicated the lesion was Stage II. Due to an estimated 25% risk of recurrence, Petitioner began immunotherapy with Keytruda in May 2023. He later developed a blood clot and was prescribed Eliquis. Dr. Shah described melanoma as a serious and potentially deadly form of skin cancer that is highly curable when detected early, which Petitioner's was, and was appropriately treated with curative surgery and post-surgical immunotherapy. (Rx3).

Dr. Shah testified that Petitioner had known melanoma risk factors, as recognized in the scientific literature, including family history of skin cancer, fair complexion, and significant alcohol use, while firefighting hasn't been proven to increase the risk. He reviewed 16 to 21 articles looking at the relationship between firefighting and melanoma and no data reflected an increased risk of the condition. Based on a review of Petitioner's fire logs and documented fire exposure history, Dr. Shah opined that there was "no data at all" to support the melanoma as caused by occupational fire exposure, and while other risk factors for melanoma exist, the fire exposure documented in the records could not have been the cause of Petitioner's invasive melanoma. He testified he had an understanding of the occupational exposures encountered in firefighting, gained through his clinical experience and prior case evaluations. Firefighting exposures in general have not been proven to increase melanoma risk. Dr. Shah concluded that Petitioner's melanoma was not caused by his occupation and that his increased risk was attributable to the noted established risk factors, as supported by scientific literature. Dr. Shah cited a study involving nearly 30,000 firefighters from San Francisco, Chicago, and Philadelphia, which found no increased incidence of melanoma. He testified that approximately two thirds of cancers in general are not preventable as they are caused by random genetic mutations, citing a study by Vogelstein in Science in March 2017 in support of this conclusion. This does not mean preventive measures, such as the use of sunscreen, are useless, but he emphasized that there is no scientific test or data establishing that Petitioner's occupational exposure as a firefighter caused or contributed to the development of his melanoma. (Rx3).

Dr. Shah criticized Dr. Cochran's conclusion that Petitioner's melanoma was caused by fire exposure sustained during firefighting as unsupported by any data or scientific evidence ("no evidence at all"), with nothing referenced in her report, particularly given the proven risk factors he does have. Dr. Shah did review Dr. Cochran's report in rebuttal to his report but did not review her 11/5/24 deposition testimony and issued his own additional report in response, indicating that none of his causation opinions changed based on this review (". . . she did not have any scientific data to support the conclusion that somehow this patient's occupation ended up causing his melanoma." Along with Petitioner's three other risk factors for melanoma, Dr. Shah also cited intermittent sun exposure, i.e. ultraviolet (UV) radiation, noting none of these risk factors are elevated by working as a firefighter. As to Dr. Cochran, he testified: "She does not specifically account for any scientific data in the studies. She refers to cancer as a single entity when there's over 200 different types of cancer. Each may have different risk factors. So I provided references and scientific and clinical data. Of course, I have been treating melanoma for 15 years. The epidemiological inconsistencies that there's a couple articles that I listed here that report elevated cancer risk in firefighters, but there's no direct causal link to melanoma." Everyone has recreational sun exposure but there is no dose response relationship – "That just means that you don't see more smoke exposure leading to patients getting melanoma. And a firefighter's work is unlikely to support that – surpass that of outdoor workers in regard to UV exposure." Dr. Shah cited three articles which showed no increased risk of melanoma among firefighters - a 2023 article by *Bigert*, which found no increased risk of melanoma among Swedish firefighters; a 2024 Nordic study by *Pukkala*, which showed inconsistent data and no reliable evidence of a direct causal association; and a study by *Heyer*, which emphasized the role of recreational UV exposure in melanoma development, therefore the mechanism by which firefighting would contribute to melanoma purely speculative. The chemical exposures encountered in firefighting, such as benzene, are not known to induce melanoma's specific genetic mutations. He also testified that the theory that "heat stress" from fires contributing to melanoma is entirely unsubstantiated. The medical literature cited by Dr. Cochran provide no actual scientific data to suggest a causal link between firefighting and melanoma. (Rx3).

During cross-examination, Dr. Shah confirmed he had not participated in any epidemiological studies during his career, is not an epidemiologist, and has not been trained in occupational medicine. He treats firefighters in his clinical practice, has conducted research in melanoma, and has reviewed related literature since 2007. He discusses the causes and risk factors of different cancers with his patients and students. As to the melanoma risk factors he referenced, none seem to relate to firefighting. He would defer to an epidemiologist as to the definition of epidemiology. He wasn't certain if the over 30 studies he relied on were epidemiological or not without reviewing them again. In his review of Dr. Cochran's 7/9/24 report and its accompanying references, he explained that several of the studies cited explored general cancer incidence among firefighters but did not provide melanoma-specific data. Noting over 200 different types of cancer, each with distinct risk factors, he opined that Dr. Cochran's assumptions were flawed by failing to differentiate between cancer types and accounting for epidemiological inconsistencies. Specifying the *Guidotti* and Bates studies she cited, they involve elevated cancer risks in firefighters, but neither specifically establishes a direct causal link to melanoma. Many studies group various cancer types together, which dilutes the specificity and applicability of findings to melanoma in particular. Additionally, he testified that sun exposure, a known risk factor for melanoma, is rarely controlled for in these studies, leading to geographic and climate-based inconsistencies. For example, firefighters in sunnier regions may experience more UV exposure than those in less sunny climates, but such variation is often not accounted for in epidemiologic analyses. Various confounding factors, including screening bias, publication bias, and uncontrolled sun exposure, undermine the reliability of studies suggesting any occupational relationship between firefighting and melanoma. He cited several high-quality studies, including those by *Bigert*, *Pukkala*, and *Heyer*, which did not demonstrate any increased melanoma risk among firefighters. In Dr. Shah's opinion, variations in sun exposure are rarely accounted for in studies, as well as publication and screening biases. He testified: "…the studies I have cited that have refuted first the studies (Dr. Cochran) cited as well as everything that she's written in her report which don't show any causal relationship.

There was no increased risk of melanoma in the *Bigert*, the *Pukkala*, or the *Heyer* study for the reasons that I've said." While substances like benzene and polycyclic aromatic hydrocarbons (PAHs) are known to cause other cancers, such as leukemia, they have not been shown to induce or cause melanoma. While heat stress can affect the skin, its role in melanoma pathogenesis has not been established. Everyone has UV radiation exposure, and firefighter exposure to UV is sporadic and has not been shown to exceed the threshold required to increase melanoma risk. The *Pukkala* study showed that there was an inconsistent melanoma risk among Nordic people that were exposed to sun. It showed inconsistent melanoma risks among firefighters across countries. The noted risk factors, like alcohol, don't cause cancer, they increase the risk. He reiterated the studies provide no proof that firefighting increases the risk. Dr. Shah has treated firefighters with neck, lung, and bladder cancer, and leukemia, but none with melanoma, which is consistent with the data. Alcohol use still increases the risk if it is discontinued, and 22 drinks per week is a lot ("the risk never goes down to zero"). The increased risk is noted by the National Institute of Health (NIH). He relied on one study, but that study analyzes three different studies. In reviewing the report, Dr. Shah agreed that the study may say the risk is stronger in some areas of the body than others, but the risk is still increased in all areas. Dr. Shah could not say if the increased risk of melanoma with alcohol use was 2%, noting "I'm not a statistician, but there is a statistical significance that alcohol is associated with an increased risk of melanoma, period." He did not see in the article a particular percentage of increased risk when asked about an "adjusted hazard ratio" of 1.02 and would defer to a statistician as to what this means. (Rx3).

Dr. Shah agreed that Petitioner's 3/28/23 medical note references his father had a history of non-melanoma skin cancer. He cited two articles in support of this family history causing the melanoma – "there's data to support my claims." Asked about the "*Risk Factors for Melanoma Skin Cancer*" article published by the Canadian Cancer Society, Dr. Shah agreed it states that the risk of melanoma increases if one or more first degree relatives have been diagnosed with melanoma, and that he had no evidence of Petitioner having first degree relatives with melanoma. He testified the Skin Cancer Foundation indicates that people with non-melanoma skin cancers have a greater risk of melanoma ("even non-melanoma skin cancer increases your risk"), and that cancer runs in families. He claims provided "many, many different articles" to support this, including the American Cancer Society. He testified that their website cites factors for increased risk of melanoma, including lighter skin tone and UV exposure. Petitioner's counsel references a third article cited by the doctor indicating that a close family member with melanoma increases the risk of melanoma, and the doctor agreed there are a number of different types of skin cancers with their own characteristics and risk factors. Dr. Shah also agreed the same website indicates that PCB chemicals, such as found in old electrical equipment, increases the risk of melanoma. He couldn't say if Petitioner had been exposed to PCBs or not, and he wasn't aware of whether PCBs are a component of the smoke in electrical fires. (Rx3).

Asked about statements in several of his cited articles in terms of other firefighter exposures and cancers, Dr. Shah testified he couldn't answer the questions without looking at the articles, including whether the types of fire exposures have changed over the years, but that his focus was melanoma. He reiterated that some of these noted exposures and causal findings relate to other types of cancers, not melanoma. He agreed that while he stated Petitioner was "cured" of melanoma, there is always a chance of recurrence. (Rx3). On redirect, Dr. Shah testified that nothing that occurred on cross-examination changed his causation opinion. In his opinion, the Nordic *Pukkala* study did not support a causal link between firefighting and melanoma, it failed to establish an etiological basis for such a connection, and actually refuted such connection. Regardless of whether Petitioner had significant or minimal fire exposure, the available facts and scientific evidence do not support an association between firefighting and an increased risk of melanoma. On recross, he agreed that the amount of Petitioner's fire exposures doesn't impact his causation opinion. (Rx3).

Px5 contains a number of photographs of Petitioner's scalp where the melanoma and post-surgical scarring is located. They were objected to by Respondent as not authenticated. The Arbitrator admitted the photos over

objection. The Arbitrator believes it is a fair demonstrative exhibit showing the process of the surgical excisions. It bears no real weight otherwise in terms of the issues presented by the parties. The Arbitrator sees nothing prejudicial in the review of the photos. The Arbitrator also reviewed the Petitioner's fire run reports from 2019 to 2/8/23, mainly a variety of structural, dumpster, and vehicle fires. (Rx5).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), WAS THE PETITIONER EXPOSED TO THE HAZARDS OF AN OCCUPATIONAL DISEASE THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT WITH THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE EXPOSURE, THE ARBITRATOR FINDS AS FOLLOWS:

EXPOSURE

As to the three issues noted above, the first issue is a hazardous exposure. As stated in the Occupational Diseases Act, Section 1(d): "An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists." While Petitioner did wear protective gear, his testimony in conjunction with the studies referenced by Dr. Cochran indicate numerous ways in which exposures occur despite these measures, particularly during overhauls and removal of the mask while remnants of fires remain on the PPE gear prior to being washed. Additionally, while there have been advances in the protection of firefighters from dangerous substances, the Petitioner also testified to times earlier in his career where he was exposed to diesel fumes, uncleaned PPE gear, and non-monitored overhauls.

Both Dr. Cochran and Dr. Shah acknowledge the existence of carcinogens at fire sites. Dr. Cochran has also persuasively testified, supported by the cited studies, that Petitioner was also exposed or potentially exposed to smoke, soot, and carcinogens that were on his PPE, in the air during fires if a mask was not completely sealed, in the air during overhauls, and on various surfaces at the fire station.

Based on the testimony of Petitioner, Chief O'Connor, and Dr. Cochran in reviewing the medical literature on firefighter exposures, and Petitioner's 27 years of firefighting with Respondent, the Arbitrator finds that the preponderance of the evidence supports the finding that Petitioner was exposed to various carcinogens and particulate matter in his work as a firefighter, and thus exposed to the hazards of an occupational disease.

REBUTTABLE PRESUMPTION

As to the "accident" issue, the Petitioner invokes the rebuttable presumption under Section 1(d) of the Illinois Workers' Occupational Diseases Act (820 ILCS 310/1(d)), which provides that certain diseases, including cancer, in the case of firefighters with at least five years of service are rebuttably presumed to arise out of and in the course of employment and to be causally connected to occupational exposures. Petitioner has the necessary 5 years of firefighting employment to qualify for the application of this presumption.

As to the rebuttable presumption, Section 1(d) states: "Any condition or impairment of health of an employee employed as a firefighter . . . which results directly or indirectly from any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial) to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting, EMT, EMT-I, A-EMT, or paramedic employment and, further, shall be rebuttably presumed to be causally connected to the hazards or exposures of

the employment." While the presumption is not applicable to any firefighter or EMT who was employed in such role or roles for less than 5 years at the time he or she files an Application for Adjustment, the Petitioner in this case has been employed in both positions for at least 27 years with Respondent.

As established by *Johnston v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC and *Simpson v Illinois Workers' Compensation Comm'n*, 2017 Il App (3d) 160024WC, once the Respondent presents evidence of another potential cause of one of the listed diseases, the presumption is rebutted and the case proceeds as any other, where Petitioner carries the typical burden of proof to prove the elements of his or her claim by the preponderance of the evidence. The *Johnston* Court stated: "With regard to the procedural effect of presumptions, most jurisdictions in this country follow the rule that a rebuttable presumption may create a prima facie case as to the particular issue in question and thus has the practical effect of requiring the party against whom it operates to come forward with evidence to meet the presumption. However, once evidence opposing the presumption comes into the case, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." The Court further stated that the evidence required to rebut the presumption "is not determined by any fixed rule" and that the party opposing the presumption "must come forward with sufficient evidence to support a finding of the nonexistence of the presumed fact." The *Johnston* Court determined, after a review of the associated legislative hearings, that the legislature intended an "ordinary" rebuttable presumption to apply, simply requiring a Respondent employer to simply offer *some* evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his or her condition, as opposed to a "clear and convincing" standard. (*Id*).

As in *Johnston*, the Respondent in the case at bar presented evidence in the form of oncologist and hematologist Dr. Shah's report and testimony that the Petitioner had non-employment risk factors which caused the presumed condition, in this case melanoma. Thus, in the Arbitrator's view, the Respondent has successfully rebutted the presumption that the melanoma was related to the employment. The question remains as to whether the preponderance of the evidence supports a finding of compensability based on an occupational exposure.

ACCIDENT AND CAUSATION

As to the noted exposure, the Arbitrator finds this occurred in the course of the Respondent's employment. While there may have been other non-work exposures, such as to UV rays, the Petitioner's work as a firefighter exposed him to the hazards of disease during the course of his employment with Respondent over the last 27 years.

As to the "arising out of" element, per Section 1(d): "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 to 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."

Based on this language, the issues of "arising out of" and causation are intertwined in this case. In making the determination like the case at bar involving hazardous exposure, the opinions of the involved experts, Dr. Cochran and Dr. Shah, are of definitive importance. Neither doctor examined or treated the Petitioner; both were retained by Petitioner and Respondent respectively to provide expert opinions. The experts both have some deficiencies in the Arbitrator's view. Dr. Cochran is an expert in the field of occupational medicine and analysis of medical literature. That being said, she does not appear to have any particular expertise in the field of cancer beyond a review of the literature. Dr. Shah is clearly more of an expert in cancer as a board certified oncologist and hematologist with significant experience in treating firefighters for a variety of cancers.

However, the content and tone of his testimony indicated a lack of detailed knowledge with regard to epidemiological studies and the determination of increased risk based on the studies referenced in the literature.

The Arbitrator notes that the actual studies relied upon by both doctors were admitted into evidence over objection. The Arbitrator concedes that he lacks the expertise to review these studies with any independent scientific understanding. That being said, the only way to determine which expert in a case like this carries more weight in their diametrically opposed opinions is, in part, to determine the reasonableness of their reliance on evidence supporting their conclusions, which the Arbitrator believes is supported by Supreme Court Rule 703. As noted at hearing in the discussion of the admission of these documents, the Arbitrator stated he would not rely on these studies and literature in making accident and causation findings. The Arbitrator has, however, reviewed the introduction and abstract portions of the studies to try to determine if the experts' reliance on them or disputes with them was reasonable.

One important fact to note in this case is that the Petitioner's only obligation is to prove, by the preponderance of the evidence, that the firefighting exposures were a cause of the melanoma condition, not necessarily the only, main, primary, or most significant cause of the condition. See *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596 (2005). This is important to note given Dr. Shah's arguments against causation are generally twofold – that the Petitioner's exposures as a firefighter do not cause melanoma, and that other factors (family history, fair complexion, and alcohol use) in fact are the cause. The latter argument is generally irrelevant if the first argument is not shown by the greater weight of the evidence. Even if all of the non-work related factors cited by Dr. Shah were in fact causative of the melanoma condition, this in and if itself does not prove that the work exposure was also a cause and does not preclude the work exposure from being an additional causative factor. Dr. Shah states at one point in his initial report that his work exposure was not the "prevailing factor" in his development of melanoma. Petitioner's work exposure need not be the "prevailing factor" in the melanoma diagnosis.

Respondent argues that Dr. Cochran's opinions do not reflect an understanding of correlation versus causation based on the literature, but the Arbitrator believes both doctors, and the literature itself, relies on statistically significant correlations to determine causation. This seems to be a key point in epidemiology. Dr. Cochran testified that her review of the medical literature related to both firefighter exposures and the causal relationship of melanoma to such exposures determined that multiple studies have determined there is a statistically significant increased risk of a causal relationship. Her work at this time includes a focus on diseases of firefighters and that she regularly reviews medical literature to determine the causes of such disease. In the Arbitrator's view, she exhibited a much clearer understanding of epidemiology and the statistics used in that field in making such a causation determination. When asked about the statistical analysis contained in one epidemiological study she explained, "when you're looking at the studies and they say this risk is 1.2, it means you have a twenty percent increased risk of having that particular condition…. And that's beyond the confidence interval which is five percent. So they look at the risk. You do a Bell curve. You look at the median risk. You do two standard deviations from it and that gives you a 95 percent confidence interval. And they report the studies with the confidence interval, CI." Dr. Shah's testimony did not evidence a similar understanding of this statistical analysis.

Dr. Shah, Respondent's expert, is an oncologist. While he testified to expertise in treating cancer patients, he does not appear to possess any particular expertise about the risk of cancer in firefighters in terms of the knowledge reflected in applicable literature and studies. While he cited studies supporting his opinion that there is no causal relationship, he really did not adequately explain why the epidemiological studies relied upon by Dr. Cochran do not support causation. Indeed, Dr. Shah did not appear to have the same expertise in understanding the interpretation of the epidemiology research surrounding firefighters and cancer that was cited

by Dr. Cochran. At one point during his deposition cross examination, he conceded that he did not know whether a study showed a statistically significant increase in melanoma among firefighters.

Dr. Cochran's causation opinion was based on several studies and metanalyses of such epidemiological studies. She testified to such studies where it was determined that there was a statistically significant higher incidence of melanoma among firefighters. A review of case law involving work exposures indicates that epidemiological research and studies have often been used to determine the cause of a disease. The Illinois legislature relied on epidemiological evidence in concluding that statutory workers' compensation law should include a rebuttable presumption of causation when a firefighter develops cancer. See *Johnston v. Ill. Workers' Comp. Comm'n*, 2017 IL App (2d) 160010WC. One such study, the "*Jalilian* study," published in 2019, was a metanalysis that reviewed 48 epidemiological studies of the link between firefighting and cancer. She reported the study found a statistically significant elevated risk for malignant melanoma among firefighters, and explained why it would be considered as reflective of statistical significance. Dr. Cochran also cited the "*Pukkala* study" which showed a significant excess risk for skin melanoma in firefighters at the 95% confidence level. Dr. Shah, on the other hand, claimed the *Pukkala* study "reported inconsistent melanoma risks among firefighters across countries, undermining a causal link." When Petitioner's counsel asked him to explain how he reached that conclusion, he didn't provide a clear answer.

While denying an occupational cause, Dr. Shah opined that Petitioner's fair complexion, alcohol use and family history were the cause of his invasive melanoma. He cited a link to an article entitled "*Alcohol Intake and Risk of Incident Melanoma: A Pooled Analysis of Three Prospective Studies in the U.S.*" The introduction to the article states: "Alcohol consumption is associated with increased risk of numerous cancers, but existing evidence for an association with melanoma is equivocal. No study has evaluated the association with different anatomic locations of melanoma." (Rx7). Dr. Shah described the study in his report as proof that "alcohol consumption may have a greater effect on melanoma risk in areas that are less exposed to UV rays, such as (Petitioner's) scalp." In fact, it appears the study may in fact reach the opposite conclusion. Again, when he was asked about this, he didn't explain a clear understanding of this literature and his testimony on cross examination was confusing in this regard. At one point it appeared to the Arbitrator that he and Petitioner's counsel were saying different things, while the doctor testified "we're saying the same thing." When he was asked about the statistical conclusion of the study as to the 1.02 adjusted hazard ratio for people who drink equal to or more than 20 grams of alcohol a day was 1.02 for melanomas of the head, neck, and extremities and whether this meant that drinkers have a two percent increased risk of melanoma in the scalp compared to nondrinkers, Dr. Shah testified: "I'll defer to a statistician." (Rx3).

Dr. Shah indicated in his reports and in his testimony that a family history of skin cancer in a first degree relative results in an increased risk of melanoma. When he was confronted on cross exam with the literature that he himself cited in support of this (*Canadian Cancer Society*) as stating this increased risk is where the first degree relative has melanoma, not simply skin cancer, and that there was no evidence Petitioner father specifically had melanoma, it did not impact his opinion. Dr. Cochran testified that had Petitioner's father had melanoma removed from his nose, they would have had to essentially remove his nose, which again there is no evidence of. Dr. Shah nevertheless insisted that if person or a family member have a history of skin cancer – any kind of skin cancer – it increases your risk for melanoma, citing on cross exam the *Skin Cancer Foundation* and the *American Cancer Society*. No study or material from either of these organizations are cited his report or submitted into evidence.

Dr. Shah was questioned further about a website his report linked to, from a website called *Cancer Research UK*. On cross, he was asked by Petitioner's counsel about a section titled "Chemicals in the workplace" and a statement that "Chemicals called polychlorinated biphenyls (PCBs) are known to increase the risk of melanoma skin cancer. These are found in some old electrical equipment. There is also research that links working as a

firefighter or in the petrol refining industry to melanoma skin cancer. However, this evidence is limited." Dr. Shah conceded that he did not know whether Petitioner was exposed to PCBs as a firefighter or whether PCBs are a component of smoke that is released in electrical fires. While Petitioner did not specifically know whether he had been exposed to PCBs in electrical fires, he did testify that he had been exposed to electrical fires in his firefighting career.

As noted by Respondent, Dr. Cochran acknowledged her current practice mainly involves medical-legal work performing IMEs and opining in Social Security Disability matters. In opining that Petitioner's melanoma was causally related to exposures while working as a firefighter, Dr. Cochran cited a 2014 *LeMasters* meta-analysis, the IARC classification of firefighting as a Group 1 carcinogenic occupation, and findings from the *National Institute for Occupational Safety and Health (NIOSH*) indicating increased incidence of cancer among career firefighters. Respondent's counsel also accurately states that Dr. Cochran relied on a general understanding of exposures faced by firefighters rather than specific information regarding Petitioner's actual exposures. However, in the context of a case like this, the Arbitrator notes that this would require documentation and tracking of every exposure of a firefighter over their career. The Arbitrator finds that given the Petitioner's testimony regarding exposures during firefighting and via his PPE gear over the years, that Dr. Cochran's reliance on these studies is valid, and that the evidence supports that the Petitioner has been exposed to a number of carcinogens over the course of his career as a firefighter.

While Dr. Cochran did not have opinions on the impact of genetics, smoking, or alcohol use, as she had not reviewed all available literature on these subjects, as noted above, whether other such factors were causative of Petitioner's melanoma does not in any way disprove that work exposures may also have been a causative factor.

Respondent also argues that Dr. Shah's opinions were made with reliance on a broad and methodologically sound base of epidemiological literature, including:

- The Bigert (2023) study of Swedish firefighters, which found no increased risk of melanoma despite controlled analyses of occupational exposures. (Tr. 34)
- The Pukkala (2024) Nordic study, which analyzed firefighter cancer risk across multiple countries and reported inconsistent results with no reliable association between firefighting and melanoma. (Tr. 34, 126)
- The Heyer study, which concluded that recreational UV exposure—rather than occupational exposure—is more likely to contribute to melanoma development and that firefighter exposure levels do not exceed thresholds associated with increased melanoma risk. (Tr. 34–35, 59)
- A large U.S.-based epidemiological cohort study of over 30,000 firefighters from San Francisco, Chicago, and Philadelphia, which reported no statistically significant association between firefighting and melanoma. (Tr. 18)

It is true that there appear to be studies out there supporting the arguments of both parties regarding causation. While Dr. Shah emphasized that the studies relied upon by Dr. Cochran often lack disease specificity and suffer from confounding variables—particularly sun exposure, which is rarely controlled for despite being the most well-known risk factor for melanoma – Dr. Shah did not explain how these same factors may have involved similar confounding factors, particularly with regard to his statements that alcohol, family history, and fair skin are causative factors, in the studies he relied on. Dr. Shah testified that many studies cited by Dr. Cochran group multiple different cancers together, which was a significant basis for his critique of her opinions. However, a basic review of the introductions and abstracts of the studies she cited do in several cases specifically indicate a greater risk of melanoma in firefighters as opposed to cancers in general.

Ultimately, it appears to the Arbitrator based on the evidence adduced at hearing that the issue of whether common firefighter work exposures can contribute to the development of melanoma is contentious and there are some differing findings in the literature cited by the two experts in this case. The Arbitrator's review of the

totality of the evidence indicates that there are studies which in fact have determined that there is a statistically significant increased risk of the condition in firefighters. There is no simple answer in this case as to causation. It is complicated. The Arbitrator acknowledges that, in the context of what is more likely than not in this case, it is a very close call, no doubt, due to this controversy and disagreement. Additionally, it is true that Dr. Shah is an oncologist and hematologist with more experience treating patients with cancer. However, it certainly appears that this issue mainly rests on the findings contained in the studies and in the medical literature. Dr. Shah discounts the opinions of Dr. Cochran in a fashion the Arbitrator finds to be unfair. His repeated criticism that she was resting her opinions on the idea that she was looking at the development of cancers in general in firefighters rather than specifically melanoma is just not correct based on the Arbitrator's review of the evidence. Several of the studies she relied on specify an increased risk of specifically melanoma and she testified to exactly why the findings were statistically significant. Dr. Shah may be accurate in concluding that no specific biological causative link has been made as to how or why this may be the case, but the Arbitrator is faced with the issue of what is more likely than not and whether "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." In this case, it appears to be more likely than not, albeit by a slim margin, that Petitioner was at an increased risk of melanoma based on his exposures to smoke, soot, and particulates in a variety of types of fires over the course of his career. While he did utilize protective gear to minimize this risk, Dr. Cochran credibly indicated that such exposures can still occur where a mask may not be completely fitted in certain situations, during overhauls without a mask, and via particulate matter on various PPE items and in the fire station itself. The Arbitrator finds the greater weight of the evidence supports the finding that the Petitioner's hazardous exposures at work for Respondent as a firefighter were more likely than not a contributing cause of his scalp melanoma.

DATE OF DISABLEMENT

As to the date of disablement, the Arbitrator finds that the date selected by Petitioner pursuant to his Application for Adjustment of Claim, 2/823, is the proper date of disablement as this was the Petitioner's last day of work before being taken off work following his biopsy, which resulted in the melanoma diagnosis.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 6(c) of the OD Act states: "There shall be given notice to the employer of disablement arising from an occupational disease as soon as practicable after the date of the disablement. If the Commission shall find that the failure to give such notice substantially prejudices the rights of the employer the Commission in its discretion may order that the right of the employee to proceed under this Act shall be barred."

The Arbitrator notes that while Arbx1 indicates notice as a disputed issue in this matter, Respondent does not make any specific arguments in this regard in its proposed decision. It appears to the Arbitrator that the Petitioner provided notice of this matter at minimum via the filing of his Application for Adjustment in mid-2023, shortly after being diagnosed with melanoma. Given this, and no evidence of prejudice to Respondent with regard to the timing of the filing, the Arbitrator finds that the Petitioner provided proper notice of the exposure and claimed injury pursuant to Section 6(c)

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 expenses contained in Px4 from DULY and U of C involve charges for reasonable and necessary medical treatment for Petitioner's scalp myeloma and associated DVT condition and are supported by the medical records in evidence. The parties agree, and the Petitioner's testimony supports, that all of the Petitioner's medical expenses have been paid by his group health carrier, Blue Cross/Blue Shield, and that this carrier's payments are subject to Section 8(j) of the WC Act, as supported by Section 7 of the OD Act.

As such, the Arbitrator finds that Respondent is entitled to credit under section 8(j) of the Workers' Compensation Act for the payments made by Blue Cross/Blue Shield to the noted providers. In accordance with the requirements of section 8(j) of the Workers' Compensation Act, Respondent shall hold Petitioner harmless and indemnify him from any claims for reimbursement from the group insurer for any medical expenses subject to such credit. Further, Respondent shall pay to Petitioner any related out-of-pocket deductibles and co-pays towards the awarded medical expenses. Respondent is only liable for the reduced amounts that Blue Cross/Blue Shield agreed to pay the providers pursuant to its managed care agreement, as those are the "negotiated rates" that Respondent is liable for under section 8(a) of the WC Act. (See Rx6).

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:

Based on the Petitioner's testimony and the work notes provided by DULY and U of C, the Arbitrator finds that the Petitioner is entitled to TTD from 2/8/23, the date he was initially taken off work for his melanoma condition, through 2/28/23. At that time, he advised U of C that he wanted to delay his surgery because he was taking a preplanned three week vacation. He testified he utilized his banked vacation time during this vacation. While the exact dates of this trip were not testified to, the Arbitrator believes it is reasonable to determine that he was on vacation for three weeks from approximately 3/1/23 through 3/21/23. Given this was a voluntary, preplanned vacation for which he used his vacation time, the Arbitrator finds Petitioner was not entitled to TTD during this period as it is unclear if he was being held off work while on this vacation. While the noted dates may not be specifically accurate given the lack of evidence, it is clear from the evidence that he was on a voluntary vacation and receiving vacation pay for a three week period which delayed a prescribed surgery.

The Arbitrator finds that Petitioner is entitled to a further period of TTD from 3/22/23 through 8/3/23. He testified he returned to work for a day on 8/4/23 before again being taken off work as of 8/5/23. Petitioner was thereafter entitled to TTD from 8/5/23 through 9/11/23, returning initially to light duty for a brief period as of 9/12/23 before returning to his full work duties.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

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

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

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

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a firefighter at the time of the accident and was able to return to his full duties in his prior capacity as a result of said injury. This factor carries moderate weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. Neither party has submitted evidence which tends to show how any permanent disability sustained as a result of the noted exposure is impacted by his age. This factor carries minimal weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner testified that he returned to work at his normal wage, and obtained the same raises he would have obtained had he not sustained the noted occupational exposure and melanoma. This factor carries moderate weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner was diagnosed with a scalp melanoma. He underwent two surgeries to remove the lesion with a sufficiently wide berth, as well as subsequent skin grafting. He was left with a relatively small bald spot on his scalp. He also underwent nine immunotherapy treatments. His medical records reference a degree of anxiety resulting from the unknowns associated with the melanoma condition, though there is no evidence of any mental health treatment in this regard. The Petitioner testified he was able to return to his regular work duties and would continue those duties through his voluntary retirement date, at which time he planned to move to Arizona. Petitioner did testify to some ongoing numbness on part of his scalp and that his left ear can have a feeling like pins and needles.

The Arbitrator notes that while the Petitioner's anxiety and fear under the circumstances of a cancer diagnosis was reasonable, he ultimately was off work for a period of time before returning to his regular work duties and to date has no evidence of any melanoma recurrence. This factor carries the most significant weight in the permanency determination.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries and similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 10% of the person as a whole pursuant to §8(d)2 of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Respondent has a reasonable argument as to non-compensability in this case, particularly after overcoming the rebuttable presumption. Given the opinions of Dr. Shah and his basis, the Arbitrator finds that the Respondent did not act in an unreasonable or vexatious way in defending this case and did not unreasonably delay benefits. As such, penalties and attorney fees pursuant to Sections 16, 19(k) and 19(l) of the Act are denied.

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

The Respondent is seeking credit for the payments to Petitioner by Respondent during his time off work following his melanoma diagnosis and treatment. Respondent indicates that Petitioner was paid $93,303.85 between 2/9/23 and 9/12/23 per Respondent (see Arbx1, part 9). The Petitioner testified that, other than a period where he was on a pre-planned vacation, he utilized his banked sick time while off work. Chief O'Connor testified that his understanding was consistent with Petitioner's testimony, that he used his sick time while off work other than a period where he used vacation time while actually being on vacation. Respondent submitted Rx2, Petitioner's payroll records, as support for its argument for a credit pursuant to Section 8(j). Chief O'Connor testified that there was no way to be able to tell what type of time benefits (i.e. sick time, vacation time, etc.) were utilized by Petitioner during the period he has been found to be entitled to TTD.

Pursuant to Section 8(j)1, credit is allowed to a Respondent based on payments made to a Petitioner under a "group plan." As the greater weight of the evidence supports that Petitioner used his sick time that he had earned during his service time, and there is no evidence this time involved any "group plan", the Arbitrator finds that Section 8(j)1 of the WC Act is not applicable in this case.

Section 8(j)2 of the WC Act states: "Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment." In this regard, as noted, the Petitioner testified that he utilized his earned sick time while off work during treatment of his melanoma condition.

The question thus is whether the Petitioner's receipt of wages via use of his sick time would be considered "full or partial salary." Petitioner cites to Section 8(j) indicating an employer does not get credit for payments which would "not have been payable if any rights of recovery existed under this Act." All 8(j) credits, operating as an exception to liability created under the Act, are narrowly construed, and it is the burden of the employer to establish the entitlement to the credit (citing *Hill Freight Lines, Inc. v. Industrial Commission*, 36 Ill. 2d. 419, 223 N.E.2d 140, 143 (1967)). Respondent has made no argument or cited any case law with regard to this issue in its proposed decision. The Petitioner did have to utilize his sick time because he was not receiving any TTD, and thus it appears that the payments via his accumulated personal sick time would not have been payable had Respondent paid TTD, which it had a right to defend against doing based on the evidence.

The Arbitrator finds in this case that it is unclear whether the Respondent is entitled to the requested TTD credit (see Arbx1) pursuant to Section 8(j) of the WC Act, and thus the Respondent has failed to prove entitlement to

the credit. Whether there is an internal mechanism that Respondent or Petitioner's union has to deal with this consequence is unclear based on the evidence presented and would nevertheless be outside of the jurisdiction of the Workers' Compensation Commission.

WITH RESPECT TO ISSUE (O), DETERMINATION OF EVIDENTIARY ISSUES, THE ARBITRATOR FINDS AS FOLLOWS:

Multiple evidentiary issues were raised by the parties. Initially the Arbitrator notes that both parties objected to the reports of the experts, Dr. Cochran and Dr. Shah, going into evidence as hearsay. Ultimately, Petitioner's counsel indicated that if Respondent's counsel dropped their hearsay objection, he would drop his.

The Arbitrator notes that technically speaking, the reports of the doctors would be considered hearsay. Depositions were obtained of both experts. At hearing, the Arbitrator overruled these objections and allowed the reports into evidence. In this Arbitrator's experience, in workers' compensation hearings, there often are reports that have extensive information in them that is crucial to the Arbitrator's understanding of the deposition testimony of experts. There is no case this Arbitrator has had before him where it is more applicable than in this case. The issue of cancer as a causally related condition is very complicated. Both doctors in this case cited extensively to multiple articles of medical literature in support of an against causation in this case. In order to address everything that was in these reports, these depositions could have taken hours and hundreds of pages to address everything in them. Access to these reports was crucial to the Arbitrator's ability to understand and address the arguments of the parties. As such, the Arbitrator believes that discretion was utilized to admit these reports into evidence for as complete of an understanding as possible of the testimony of the experts.

This leads to the main second evidentiary issue, which is the admission of the medical literature studies themselves. As anticipated by the Arbitrator, the testimony of the experts in this case had a paucity of complete information with regard to these studies. Well over 30 studies were referenced. Again, the Arbitrator believes that these studies are important in the review of the testimony of the experts. For example, as noted above, Dr. Cochran references multiple studies as supportive that melanoma is causally related to firefighter exposures. Dr. Shah testified that there are no studies in support if this causal relationship. Is the Arbitrator to flip a coin in this regard and hope that he he's correct in determining who is more likely correct? The Arbitrator, again as noted above, has no specific expertise in being able to review these studies and to analyze them as an expert would, and does not hold himself out as such. That being said, there are listed objectives, methods, analyses, and conclusions summarized in these reports that at least provide some basis for the Arbitrator to attempt to make heads or tails out of a very complicated issue where two experts have completely opposed opinions. Both parties had the opportunity to cross-examine the opposing expert on anything contained in the reports. The Arbitrator believes he had the discretion to allow these reports in over the objections of the parties pursuant to Supreme Court Rule 703.

Pursuant to the Rule, an expert witness may base their opinion(s) on facts or data that might not be admissible in court, as long as those facts or data are the type that experts in the field would reasonably rely on. If such inadmissible evidence is disclosed to the jury to help evaluate the expert's opinion, its probative value must substantially outweigh its prejudicial effect. To the Arbitrator's understanding of Supreme Court Rule 703, the key issues in determining the admissibility of the epidemiological studies relied upon by the experts in this case involves, first, determining whether the probative value outweighs any prejudicial impact of the admission, and secondly, if admitted, making sure the Arbitrator isn't relying on these studies to make determinations in the case, but rather relying on them only insofar as needed to address the weight to be given to the experts utilizing the studies. In other words, the Arbitrator cannot ignore the experts and rely upon the epidemiological studies in making his or her determinations. However, the studies can be reviewed to determine the credibility of the opinions of the experts. That is wat was done in this case, and the Arbitrator confirms that in his view the

medical literature was and is admissible into evidence. As such, Petitioner's Exhibits 6A1-33, 6B1 to 7, 6C1 through 4, 6D1 through 8, 7A through 7K, and Respondent's Exhibit 7 are admitted into the evidentiary record.

Respondent also objected to the records of DULY (Px2) and the University of Chicago (Px3A, B, C and D) being admitted as being non-certified. The Arbitrator finds that the records were subpoenaed. The records appear to be complete. Neither party has provided any evidence that the records were not complete. Both experts relied on these records and indicated that the Petitioner did in fact have a scalp melanoma and the treatment instituted was reasonable and necessary. There is no actual issue as to the diagnosis, treatment, and work recommendations provided to Petitioner. The key issues in this case are exposure and causation, not the actual diagnosis or treatment rendered. Given the records were subpoenaed, the Arbitrator determined they were admissible into evidence and this determination stands. The same goes for the billing of these facilities (Px4A through E).

Respondent objected to the photographs submitted as Petitioner's Exhibits 5A through 5I. These were allowed in over objections to relevancy and foundation. The Arbitrator admitted these for the sole purpose of being able to look at the lesion, the surgical wound, and the resulting wound. The parties also asked the Arbitrator to view the Petitioner's head scar at the hearing and to describe it for the record, which he did. The Arbitrator believes these photos and the viewing assisted in an understanding of the procedure the Petitioner went through, but ultimately, they carry no real weight in terms of the actual issues presented in this case, and any issues of admissibility are harmless in this regard as these exhibits and viewings are not prejudicial in any way to the issues adjudged.

Based on the testimony of Chief O'Connor, the Arbitrator finds that the response to Respondent's FOIA request (Rx5) is sufficiently accurate. The response was tailored to the Respondent's counsel's specific request for all actual fires the Petitioner responded to, though it was also made clear that the information contained only excerpts of the information that would be contained in the Petitioner's actual fire reports for each fire.

With regard to all of the admitted exhibits noted in this section of the decision, in the Arbitrator's view, the probative value of the exhibits exceeds any prejudice that might inure to the party objecting to the exhibits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028744
Case Name	Patrick Doogan v. Lewis Bakery
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0295
Number of Pages of Decision	25
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Gary Friedman
Respondent Attorney	Gina Panepinto

DATE FILED: 10/23/2026

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK DOOGAN,

Petitioner,

vs. NO: 22 WC 0028744

LEWIS BAKING COMPANY,

Respondent.

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, medical expenses, and nature and extent of disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, and finds that Petitioner sustained an accidental injury arising out of and in the course of his employment on October 15, 2022, and that the current condition of Petitioner's left knee is causally related to the accident. The Commission awards temporary total disability, medical expenses, and permanent partial disability with a credit to Respondent for previously paid TTD benefits.

The Commission views the evidence and law differently than the Arbitrator and, therefore, reverses the Arbitrator's Conclusions of Law regarding Issues (C), (F), (J), (K), and (L) as set forth below.

Findings of Fact

On October 15, 2022, Petitioner was employed by Respondent as a route salesman when he injured his left knee in the course of his employment. (T. 10, RX5) Petitioner testified he began working for Respondent three weeks earlier and was in training at the time of his injury. (T. 11) Petitioner described his job as delivering bread to stores. (T. 10) Petitioner denied pre-existing left knee problems or left knee injuries before October 15, 2022. (T. 10-11) Petitioner testified he was

positioned on the floor placing bread product on the lowest shelf and injured his knee while standing up. Regarding the mechanism of injury, Petitioner testified to the following:

> I was shelving bread as we were making deliveries. It was several hours into our shift and I was shelving the bottom shelf and I was down on the floor on my knees and I went to stand up. I used my left leg -- there was nothing to grab onto. So I had my left leg up and my right knee I was still kneeling and I stood up. (T. 12)

Petitioner's testimony was consistent with his Employee's Report of Injury. (RX4) Petitioner denied feeling a pop or a snap but his left knee hurt when he stood up. (T. 12-13) Petitioner testified he finished his shift that day; however, he continued to feel pain in his knee. (T. 13-14) Petitioner testified he had a long drive home and when he exited his car his knee was very sore and seemed to stiffen and swell. (T. 14) He took two Tylenols.

Petitioner testified the injury occurred on a Saturday and he was off on Sunday. (T. 15) By Monday morning, the knee was very sore and Petitioner noticed the knee was swollen. Petitioner testified he almost fell down as he went to get out of bed. Petitioner testified he called and reported his injury to Respondent that Monday morning on October 17, 2022. (T. 15-16) Petitioner testified he reported he could barely walk.

On October 18, 2022, Petitioner presented to Access Community Health Network complaining of left knee pain. (PX1 at 2-4) The chief complaint described indicated: "He delivers bread and strained his leg when he stood up." (PX1 at 2) The attending physician assistant noted "his left knee swells up at work place while stocking products in lower self." (PX1 at 3) It was further noted that trying to get up causes tension in his left knee which makes it painful. The physician assistant indicated there was swelling and pain on the lateral side of his left knee. Petitioner was described as overweight with a BMI over 25. (PX1 at 4) Petitioner denied previous injury to the left knee. The evaluating physician assistant diagnosed sprain of the collateral ligament and recommended icing, medication, and knee support.

On October 27, 2022, Petitioner sought medical treatment at Illinois Orthopedic Network. (PX2 at 1) Dr. Chanduri evaluated Petitioner and recorded the following mechanism of injury:

> He was stocking bread on the bottom shelf. To do so he was kneeling on both of his knees. He states as he got up he stuck his left leg in front to stand up when he felt a strain within the left knee. (PX2 at 1)

Petitioner reported he worked for a bread company and believed he was at a Jewel Food Store at the time of the injury. Petitioner reported he experienced pain throughout the day at work. Petitioner reported his knee pain gradually worsened and his pain was now more diffuse over the knee. Petitioner described "three areas of bumps" with swelling over the lateral aspect of the knee. Petitioner further reported having difficulty with ambulation. Petitioner rated his pain as an 8/10. Dr. Chanduri noted Petitioner localized "most of his pain suprapatellar and laterally." (PX2 at 1)

It was further noted that Petitioner had been off work since the injury. On examination, Dr. Chanduri noted edema over the suprapatellar and lateral aspects of the knee and tenderness along the vastus lateralis. Dr. Chanduri further noted Petitioner was limping on the left. It was his assessment that Petitioner sustained a left quadriceps strain with bursitis. Dr. Chanduri recommended physical therapy and indicated Petitioner was to remain off work.

Petitioner attended therapy at Total Rehab from November 7, 2022 through December 7, 2022. (PX5 at 9-36) During the initial therapy evaluation, the therapist documented constant pain over the anterior, inferior and lateral aspects of the left knee, with increased pain going down stairs, bending and squatting. Petitioner also complained of difficulty sleeping due to pain.

Dr. Koutsky at Illinois Orthopedic Network conducted a telemedicine consultation with Petitioner on December 7, 2022. (PX2 at 5) Dr. Koutsky documented a slightly different accident history, describing constant kneeling during work, which involved lifting the body up from a kneeling position with resulting stiffness and swelling over the knee, suggesting more of a repetitive mechanism rather than a singular trauma. Nevertheless, Dr. Koutsky further noted Petitioner reported being injured at work on October 15, 2022. Petitioner reported mild improvement with therapy and complained of ongoing daily pain with intermittent swelling. Dr. Koutsky noted pain behind the kneecap and suspected possible patellar tendonitis. Dr. Koutsky ordered an MRI.

Petitioner continued attending therapy from December 9, 2022 through January 19, 2023. (PX5 at 38-64) An MRI performed on January 19, 2023, demonstrated a Grade II signal involving the posterior horn of the medial meniscus reaching the articular surface, subluxation of the anterior horn of the medial meniscus, and a partial tear of the anterior cruciate ligament. The MRI also showed medial and lateral sided femorotibial degenerative joint disease along with degenerative derangement of the lateral meniscus and quadriceps tendinosis. (PX9)

Dr. Koutsky next saw Petitioner on January 23, 2023. (PX3) Dr. Koutsky noted Petitioner's symptoms began after a work related injury on October 15, 2022. Petitioner described feeling a "twinge" in his left knee while standing up from a kneeling position. Dr. Koutsky reviewed the MRI and noted tricompartmental degenerative changes with some signal change in the medial meniscus consistent for "possible" tear and a partial tear of the ACL. Dr. Koutsky injected Petitioner's knee and discussed arthroscopy with partial meniscectomy. Petitioner returned for follow-up on February 20, 2023, and reported short-term relief from the injection. Petitioner agreed to undergo surgical repair.

At Respondent's request, Dr. Dairyko performed a section 12 evaluation on March 6, 2023. (RX3, deposition exhibit #2) Petitioner provided a consistent history regarding the onset of left knee pain while using his left leg to stand up from a kneeling position. During Dr. Dairyko's examination, Petitioner exhibited tenderness over the medial joint line. Dr. Dairyko reviewed the MRI and diagnosed left knee osteoarthritis with degeneration of the medial meniscus. Dr. Dairyko further noted a partial tear of the ACL and Grade IV chondromalacia in the patellar compartment.

It was Dr. Dairyko's opinion that the incident as described by Petitioner was not sufficient to aggravate or accelerate the degenerative condition of the knee. Dr. Dairyko opined Petitioner should be at baseline and placed the injury at MMI with no need for work restrictions.

Dr. Koutsky re-evaluated Petitioner on April 17, 2023 and reviewed Dr. Dairyko's IME report. (PX3) Dr. Koutsky disagreed with Dr. Dairyko's MMI opinions and indicated Petitioner continued to have pain despite physical therapy and an injection. Dr. Koutsky reiterated his prior recommendation for arthroscopic surgery.

Petitioner underwent surgery with Dr. Koutsky on June 16, 2023, during which Dr. Koutsky performed a medial meniscectomy and chondroplasty of the patellofemoral compartment, medial femoral condyle and medial tibial plateau, and synovectomy of the suprapatellar pouch in both the medial and lateral gutters. (PX2 at 9) During the surgery, Dr. Koutsky found evidence of an unstable tear of the body of the posterior horn of the medial meniscus. (PX2 at 10) The post-operative diagnoses included medial meniscus tear, synovitis and chondromalacia. (PX2 at 9) Dr. Koutsky issued a work status report extending Petitioner's off work restriction. (PX2 at 12)

Petitioner returned to Dr. Koutsky on June 27, 2023 for post-operative evaluation and ordered physical therapy. (PX3 at 14) Petitioner next saw Dr. Koutsky on August 1, 2023 and was directed to continue with therapy. (PX3 at 21) Dr. Koutsky continued following up with Petitioner for post-operative evaluations and ordered work conditioning on September 26, 2023. (PX3 at 24) Petitioner initiated work conditioning at ATI Physical Therapy and returned to Dr. Koutsky on November 20 and December 18, 2023. (PX3 at 27, 30) Dr. Koutsky discharged Petitioner on December 18, 2023 and issued a work status report releasing Petitioner for full duty work with no restrictions. (PX3 at 32)

At ATI Physical Therapy, a discharge summary was issued on December 23, 2023. (PX14 at 2) The therapist indicated Petitioner made objective improvements in strength with increased physical abilities pertaining to lifting, carrying, squatting, and negotiating stairs. The report described Petitioner's job as a medium physical demand level occupation and noted Petitioner was capable of working at the medium demand level.

Petitioner testified his left knee felt better when he was discharged from care as compared to how it felt before the surgery and the knee was "definitely stronger from the rehabilitation." (T. 28) Regarding his current condition, Petitioner testified he continues to experience problems from time to time. Petitioner testified he sometimes experiences a lot of pain while walking. (T. 29) He further stated the knee "feels like it moves backwards sometimes." Petitioner testified he did not return to work for Respondent but did not explain whether that was his decision or Respondent's decision. (T. 30) Petitioner testified he does not believe he could return to that job because he does not believe he could go down onto the floor or crouch down that low. (T. 29) Petitioner answered "yes" when asked if he continues to have limitations with bending or flexing the knee. (T. 30) Petitioner also answered "yes" when asked if he has knee pain when squatting or bending to a full

flexed position. Petitioner confirmed he had not sought any additional treatment since his discharge from care on December 18, 2023.

On cross-examination, Petitioner agreed he has no medical restrictions concerning his left knee. (T. 36) Petitioner agreed he was never told by any physician that he could not return to the same job. (T. 36-37) Regarding the initial onset of knee pain, Petitioner testified he felt pain in his "whole knee" rather than one side or part of the knee. (T. 39) Asked about his initial complaints at the clinic and whether those complaints were limited to a particular side of the knee, Petitioner explained that the only reference he made to one side of the knee was in pointing to the area where he noticed three small areas of bumps where it appeared like little mice under the skin. (T. 40)

Respondent's Section 12 IME physician, Dr. Dairyko, testified via deposition. (RX3) Dr. Dairyko is a board certified orthopedic surgeon with a subspecialty in sports medicine and practices with Duly Health and Care. (RX3 at 5-6) Dr. Dairyko testified he treats patients for "pretty much everything" but his main focus is on the knees and shoulders. (RX3 at 6) Dr. Dairyko diagnosed left knee pain, arthritis, and possible medial meniscus tear. (RX3 at 13) Dr. Dairyko reviewed the MRI obtained on January 19, 2023, and agreed with the findings set forth in the radiology report. (RX3 at 14-15) During his examination, Petitioner presented with complaints of left knee pain and exhibited tenderness to palpation over the medial joint line and over the medial patella facet. (RX3 at 16) Asked for his opinion as to whether or not the complaints Petitioner had during the IME were causally related to the work incident, Dr. Dairyko replied, "So, I don't think so. I don't think so." (RX3 at 16) Dr. Dairyko further testified that Petitioner had osteoarthritis and he did not believe that the "movement in question or the injury in question was sufficient to aggravate his degenerative knee condition to accelerate his condition." (RX3 at 18) Dr. Dairyko explained that the simple act of bending down and getting up should not have been enough in his opinion to accelerate his condition or to continue to generate continued pain after months of physical therapy and a cortisone injection. (RX3 at 18)

On cross-examination, Dr. Dairyko did not recall seeing anything to indicate prior knee pain before the claimed injury and noted he would have noted that in his report if he had seen documented records or history referring to past complaints. (RX3 at 33-34) Dr. Dairyko conceded that Petitioner "aggravated the arthritic change that was in his knee." (RX3 at 37) Asked for clarification given the doctor's testimony on direct examination, Dr. Dairyko explained, "What I said was that the incident described by the employee was not sufficient to aggravate the degenerative condition to accelerate his condition." (RX3 at 37) Dr. Dairyko drew a distinction between aggravation and acceleration and agreed it would be fair to say that the incident aggravated the condition but did not accelerate the condition. (RX3 at 37-38) Dr. Dairyko agreed that it was the aggravation of the arthritic knee that produced the pain. (RX3 at 38) On re-direct examination, Dr. Dairyko clarified it was his opinion that the incident caused a temporary aggravation. (RX3 at 38) Dr. Dairyko agreed that Petitioner should have returned to his pre-accident baseline condition by the time of his examination. (RX3 at 39)

Conclusions of Law

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

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he or she has suffered a disabling injury arising out of and in the course of his or her employment. 820 ILCS 305/1(d). Both elements must be present at the time of the claimant's injury in order to justify compensation. *McAllister vs. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, P32. An injury occurs in the course of employment when it is sustained while a claimant is at work or while she performs reasonable activities in conjunction with her employment. *Id*. at P34. The "arising out of" component refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id*. at 36. To determine whether an injury at work arises out of the employment, we must categorize the risk to which the claimant was exposed. *Id*. at 36. Courts have recognized three general types of risks to which an employee may be exposed: (1) risks that are distinctly associated with the employment; (2) risks that are personal to the employee; and (3) neutral risks that do not have any particular employment or personal characteristics. *Id*. at 38.

In this case, there is no dispute that Petitioner was in the course of his employment at the time of the claimed injury. The Commission finds the injury arose out of the employment as the injury sustained while standing from a kneeling position on the floor stemmed from a risk distinctly associated with the employment. The Arbitrator noted the claimed injury would have arisen out of the employment *if it occurred*; however, the Arbitrator found there was no accidental injury in the first instance. See *Elliott vs. Industrial Comm'n*, 303 Ill. App. 3d 185, 188, 707 N.E.2d 228 (1999) ("Even before there can be consideration of whether an accidental injury arose out of employment, claimant must prove there was an accidental injury.") An accident is defined as anything that happens without design or an event unforeseen by the person to whom it happened. *Id*. at 188. In short, the Arbitrator concluded Petitioner failed to establish an accidental injury had occurred within the meaning of the Act. In that regard, the Arbitrator explained his finding as follows:

> The Petitioner failed to articulate what specifically about the act of getting up unassisted from the floor caused a specific injury other than to generally make his knee hurt. ***Experiencing pain from getting up from the floor*** while on the job that allows him to continue his work activity for the rest of the work ***could not reasonably be considered an accident*** as it was the work activity itself. (Emphasis added.) (Arbitration Decision at 8)

The mechanism of injury described by Petitioner is similar to the mechanism of injury encountered in *McAllister*, where the Supreme Court's recitation of the facts indicated the claimant (a sous chef) stood up from a "kneeling position" and felt his right knee "pop." *McAllister vs. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, P 6. In the case at bar, Petitioner described the same physical movement of standing up but *denied* feeling a pop. Petitioner simply

described feeling a sensation of pain. The Arbitrator found this significant. The Commission views the evidence differently.

As to the mechanism of injury, the Commission finds Petitioner was kneeling on the floor, resting on both knees, and stocking bread product on a lower shelf, when he decided to stand up. Petitioner described placing his left foot out in front of him and using his left leg for support as he raised himself off the floor. There was nothing available for Petitioner to grab a hold of while raising himself up off the floor. With his left leg supporting his weight, Petitioner felt pain in his left knee as he stood up. The Commission further finds that the incident set in motion uninterrupted worsening symptomology, and therefore, the initial onset of pain cannot be viewed in a vacuum without considering the evidence as a whole. In this case, Petitioner's knee pain continued to persist during the remainder of his shift. After a long drive home, Petitioner exited his car and noticed his knee was very sore and seemed to stiffen and swell. Petitioner was off on Sunday and by Monday morning the knee was very sore and Petitioner noticed the knee was swollen. Petitioner testified he almost fell down as he went to get out of bed. Petitioner testified he called and reported his injury to Respondent that Monday morning and Petitioner further testified he reported he could "barely walk" at that time. When Petitioner presented to Dr. Chunduri on October 27, 2022, he exhibited a noticeable limp. Based on the totality of the evidence, the Commission finds Petitioner sustained an accidental injury to his left knee which arose out of and in the course of his employment.

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

The chain of events supplies circumstantial evidence supporting causation. "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." *Schroeder vs. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, P25. In preexisting condition cases, recovery will depend on the claimant's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Sisbro, Inc. vs. Industrial Comm'n*, 207 Ill. 2d 193, 204-205, 797 N.E.2d 665 (2003). Petitioner denied a prior history of knee problems or knee injuries. There is no conflicting medical evidence in the record to show knee symptoms were present before the date of the claimed injury. When standing up from a kneeling position, Petitioner had a contemporaneous onset of left knee pain with worsening symptomology over the next several days. Petitioner was taken off work and received continuous and uninterrupted treatment which culminated in surgery. Respondent argues that evidence of causation for the operated medial meniscus is lacking because the early treatment records documented pain complaints localized initially to the lateral side. The Commission notes, however, that the knee pain became more diffuse as reflected in Dr. Chanduri's office visit note of October 27, 2022. The Commission further notes that Dr. Chanduri indicated that "*most* of his pain suprapatellar and laterally." (Emphasis added.) This pain description does not exclude medial sided pain. Additionally,

Petitioner testified his whole knee was painful, and Dr. Dairyko did find medial-sided tenderness during his examination on March 6, 2023. Dr. Dairyko testified that the arthritis present in Petitioner's left knee was a competent source of pain and he opined that the act of standing up aggravated the arthritis, albeit only temporarily. The Commission finds that the evidence as a whole supports more than a temporary aggravation since the subjective complaints did not improve significantly until after the surgery, which included chondroplasty in multiple areas of the knee in addition to the medial meniscus repair. Accordingly, the Commission finds Petitioner's current condition in the left knee is causally related to the work accident.

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

Respondent's dispute over the medical expenses is predicated solely on its accident defense. Having found Petitioner established a compensable accident, the Commission finds Petitioner established entitlement to payment of his reasonable and related medical expenses. The Commission awards the reasonably related medical expenses contained in the exhibits, subject to §8(a) and §8.2 of the Act.

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

Respondent's dispute over TTD is predicated solely on its accident defense. Having found Petitioner established a compensable accident, the Commission finds Petitioner established entitlement to TTD benefits for the period of October 16, 2022 through December 18, 2023, representing 61-1/7 weeks. Respondent is entitled to a credit for the TTD benefits already paid.

Issue (L): What is the nature and extent of the injury?

The Commission must consider the five factors set forth in §8.1b(b) of the Act for guidance in determining the nature and extent of any permanent partial disability. The five factors are: (i) the reported level of impairment pursuant to subsection, if any; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single factor shall be the sole determinate 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 are explained below. The enumerated factors were considered as follows:

With regard to subsection (i) of Section 8.1b(b), the Commission notes that no impairment report and/or an opinion was submitted into evidence. The Commission, therefore, gives no weight to this factor.

With regard to subsection (ii) of the Section 8.1b(b), the occupation of the employee, the Commission notes that the Petitioner was employed as a route salesman/delivery worker at the time of the injury. Petitioner did not return to his employment with Respondent, and Petitioner testified he did not believe he could return to the job as he does not believe he can crouch down to the floor like he did prior to the injury. The medical records show Petitioner was released to full duty work with no restrictions. The Commission gives this factor moderate weight.

With regard to subsection (iii) of the Section 8.1b(b), the age of the employee at the time of injury, the Commission notes that the Petitioner was 57 years old at the time of the accident. Petitioner has several years remaining in his work-life expectancy with the residual knee complaints. The Commission gives some weight to this factor.

With regard to subsection (iv) of the Section 8.1b(b), the Petitioner's future earning capacity, the Commission notes there was no evidence presented to show any anticipated diminishment of future earning capacity. The Commission therefore gives little weight to this factor.

With regard to subsection (v) of the Section 8.1b(b), the evidence of disability corroborated by the treating medical records, the Commission notes that Petitioner suffered a left knee injury which culminated in arthroscopic repair of a torn medial meniscus and chondroplasty of the patellofemoral compartment, medial femoral condyle and medial tibial plateau, and synovectomy of the suprapatellar pouch. Petitioner obtained significant relief following the surgery and achieved objective improvement with strength and increased physical abilities pertaining to lifting, carrying, squatting and negotiating stairs. Petitioner was released to full duty with no restrictions on December 18, 2023. Petitioner testified he continues to feel knee pain and the knee "feels like it moves backwards sometimes." The Commission gives some weight to this factor.

The Commission notes that determination of permanent disability is not simply a calculation, but a valuation of all five factors as stated in the Act. Therefore, having considered the factors enumerated in Section 8.1b(b) of the Act, 820 ILCS 305/8.1b(b), the Commission finds that as a result of the accidental injury sustained on October 15, 2022, the Petitioner has sustained permanent partial disability to the extent of 17.5% loss of use of the left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 17, 2025, is reversed in its entirety.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being relating to his left knee is causally related to his work accident on October 15, 2022.

IT IS FURTHER ORDERED that Respondent shall pay the reasonable and necessary medical expenses related to the treatment for the left knee as contained in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $583.33/week for 61-1/7 weeks, commencing October 16, 2022 through December 18, 2023, as provided in Section 8(b) of the Act. Respondent shall receive a credit in the amount of $13,083.25 for temporary total disability benefits previously paid to Petitioner.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner permanent partial disability benefits of $525.00 for 37.625 weeks, because Petitioner's injuries caused a 17.5% loss of use of the left leg, as provided for in §8(e)12 of the Act.

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

IT IS FURTHER ORDERED that Respondent pay to Petitioner interest pursuant to §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 $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.

OCTOBER 23 2026

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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	22WC028744
Case Name	Patrick Doogan v. Lewis Bakery
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Gary Friedman
Respondent Attorney	Gina Panepinto

DATE FILED: 11/17/2025

/s/Michael Glaub, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 12 2025 3.69%

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

Patrick Doogan
Employee/Petitioner

v.

Chicago Baking Company
Employer/Respondent

Case # **22WC028744**

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 **Waukgan**, on **August 26, 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 **10/15/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, the Petitioner earned $**45,500.00** ; the average weekly wage was $875.00. (Moot)

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** children under 18.

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

Respondent shall be given a credit of **$13,083.25** for TTD , $ 0 for TPD, $ 0for maintenance, and **$23,296.58** for other (medical bills) benefits, for a total credit of $36,379.83.

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

ORDER

PETITIONER FAILED TO PROVE THAT HE SUSTAINED ACCIDENTAL INJURIES TO HIS LEFT LEG/KNEE WHICH AROSE OUT OF EMPLOYMENT WITH RESPONDENT ON OCTOBER 15, 2022. PETITIONER FAILED TO PROVE HIS LEFT KNEE CONDITION IS CAUSALLY RELATED TO THE INCIDENT OF 10/15/22.

NO BENEFITS ARE AWARDED

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

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

Michael Glaub
Signature of Arbitrator

NOVEMBER 17 2025

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

This matter was tried in Waukegan before Arbitrator Glaub on August 26, 2022. Parties have disputed the issues of accident, that the injuries arose out of and in the course of his employment, causal relation, temporary total disability, medical bills, and the nature and extent of the injury.

STATEMENT OF FACTS

On and before October 15, 2022, the Petitioner, Patrick Doogan, was employed by the Respondent, Lewis Baking Company d/b/a Chicago Baking Company, as a route salesman for approximately 3 weeks (T10-11). On October 15, 2022, the Petitioner was 57 years old (T10). The Petitioner was still in training on October 15, 2022 (T10). For the first 17 days of Petitioner's employment, he was trained by Respondent's employee Steve Parlatore (T43, 52). On October 15, 2022, the Petitioner was being trained by a different employee of the Respondent (T43, 52). As part of Petitioner's duties, he would drive in a delivery truck transporting bread to various businesses and assist in unloading the bread from the truck and stocking the shelves of the various businesses and grocery stores (T10, 13). Petitioner's duties included kneeling down on Petitioner's knees to stock the bottom shelves (T12).

Immediately before the incident at work on October 15, 2022, the Petitioner did not have any pain or issues as it relates to his left knee (T10). Prior to the October 15, 2022, incident, the Petitioner had not sustained any injuries to the left knee (T11). Prior to the October 15, 2022, incident the Petitioner was able to physically work full-duty as it relates to his left knee (T11). Since the incident at work on October 15, 2022, the Petitioner has not suffered any new or further accidents or injuries involving his left knee (T16)

On Saturday, October 15, 2022, the Petitioner was at a grocery store delivering bread, several hours into his shift (T12,). Petitioner was kneeling on both knees stocking the bottom shelf (T12). The floor was hard tile (T42). Petitioner went to stand up by lifting his left knee up off the floor, planting his left foot with his right knee still down on the floor (T12). There was nothing for Petitioner to grab onto with his arms to assist in standing up (T12). When Petitioner pushed with his left leg and foot

to stand up, he felt a twinge and pain in his left knee (T12, Px1 p3-4, Px2 p1-2). Petitioner denied feeling a pop or a snap in his knee (T13).

After feeling the pain in his left knee, the Petitioner finished his shift and did not report his pain to the trainer with him on the delivery site (T13, T41). Petitioner was new to the job and attempted to tough out the pain in his left knee and finish his shift (T41-42). As the day progressed on October 15, 2022, the Petitioner's pain and symptoms in his left knee worsened, including soreness, stiffness, and swelling (T13, Px1 p3-4). On his return home, the Petitioner took Tylenol for his symptoms (T13).

Petitioner was not scheduled to work on Sunday, October 16, 2022 (T15). Between October 15, 2022, and October 17, 2022, Petitioner's next scheduled shift, his symptoms worsened with visible swelling on his left knee and increased soreness (T15). Petitioner began having difficultly ambulating on the left knee when he awoke on October 17, 2022 (T16). Petitioner reported his October 15, 2022, injury and worsening symptoms to Respondent on or about 1:00AM on October 17, 2022 (T48). After reporting the injury, Petitioner was sent at Respondent's direction for medical attention at Access Des Plaines Valley Health Center (T15 -16). Respondent's employee, Joe Parlatore, spoke with Petitioner and completed work injury reporting paperwork (T33, TR49-50 Rx. 4 and 5).

On October 18, 2022, the Petitioner received treatment for his left knee at Access Des Plaines Valley Health Center with PA Miteshkumar Modi (T16, Px1). The Petitioner's left knee was noted to be positive for joint swelling, left lateral ligament swelling, redness or other deformity was noted, with intact flexion and extension with pain (Px1 p 3-4). Petitioner was diagnosed with a sprain of the collateral ligament of the left knee (Px1 p4). Petitioner was prescribed muscle relaxers and pain medication and was placed on off work status (T16, Px1 p4).

On October 27, 2022, the Petitioner sought further care and treatment with Illinois Orthopedic Network, also known as ION (T16-17, Px2). At ION, Petitioner was examined by Dr. Krishna Chunduri and was assessed as suffering from left knee pain, bursitis, and left quadriceps strain as a result of the October 15, 2022, work injury. Dr. Chunduri prescribed physical therapy, Tylenol, topical diclofenac gel and muscle relaxers for Petitioner (T17, Px2 p2). Dr. Chunduri was unable to prescribe anti-inflammatories or other NSAIDs given Petitioner's history of Crohn's disease (Px1 p2). Dr. Chunduri continued Petitioner's off work status for four weeks and advised Petitioner to stay off his

knees as much as possible (Px2 p2-3). Petitioner's medications were filled by Midwest Specialty Pharmacy (Px8).

On November 7, 2022, the Petitioner began physical therapy for his left knee with Total Rehab P.C., complying with the referral of Dr. Chunduri's October 27, 2022, order (T17-18, Pet. Exhibit 5). At Total Rehab P.C., the Petitioner was treated with various modalities, including ultrasound stimulation, massage, electrical stimulation, and various exercises on his left knee (T18, Px5). Total Rehab P.C. continued to treat Petitioner from November 7, 2022, through September 27, 2023, with these various modalities between Petitioner's visits with his other treaters (Px5). The treatments provided by Total Rehab P.C. alleviated some but not all of Petitioner's pain symptoms in his left knee (Px5).

On December 7, 2022, the Petitioner was examined at DuPage Spine and Orthopedics by orthopedic surgeon Kevin Koutsky (Px. 3 pgs. 5-7). Petitioner reported continued pain, stiffness and impairment in his left knee with only mild improvement from physical therapy to date (T18-19, Px5 p5). Dr. Koutsky ordered an MRI of the left knee to rule out internal pathology with consideration for an injection if indicated (Px3 p5). Dr. Koutsky maintained Petitioner's off work status and ordered further physical therapy and medication (T18-19, Px 5 pgs. 5-8).

From December 7, 2022, through January 4, 2023, the Petitioner continued to receive physical therapy from Total Rehab P.C. (T19, Px5). On January 19, 2023, the Petitioner underwent an MRI of the left knee with MedLegal Associates (Px9). The MRI revealed a partial ACL tear, altered signal in the medial meniscus consistent with a possible tear, and various degenerative findings indicative of osteoarthritis (Px9).

On January 23, 2023, the Petitioner was examined by Dr. Koutsky and the results of the January 19, 2023, MRI were reviewed (T19-20, Px3 p1-3). Dr. Koutsky opined that the MRI scan demonstrated degenerative changes, signal change consistent with a possible tear of the medical meniscus, and a partial tear of the ACL (Px 3. P2). Dr. Koutsky recommended and the Petitioner received a steroid injection into the left knee (T20, Px3 p2). The potential for surgery was discussed with Petitioner if the injection did not prove effective (T21). Dr. Koutsky placed Petitioner on sedentary/sitting only

restrictions, prescribed further physical therapy and renewed cyclobenzaprine prescriptions (Px3 p3, Px8).

On February 20, 2023, Petitioner returned to Dr. Koutsky for orthopedic evaluation (Px3, p7-9). The steroid injection of January 23, 2023, was noted to have provided only short-term relief, and Dr. Koutsky formally recommended arthroscopy and partial meniscectomy to address Petitioner's left knee condition (Px3 p8). Petitioner remained on sedentary/sitting restrictions and additional physical therapy and non-NSAID medication was prescribed (Px2 p8-9).

On March 6, 2023, the Petitioner attended an IME with Dr. Gregory Dairyko, an orthopedic surgeon (T20, Rx3). Dr. Dairyko examined Petitioner on March 6, 2023. Dr. Dairyko generated a report based on his examination, the medical records provided to him, and the MRI report of January 19, 2023 (Rx3). Dr. Dairyko opined that Petitioner has left knee osteoarthritis and that his left knee condition was pre-existing and not aggravated by the work injury of October 15, 2022 (Rx3). Dr. Dariyko opined that Petitioner was at his baseline condition and was at MMI with no need for work restrictions (Rx3). Respondent continued to pay Petitioner TTD from October 18, 2022, until March 23, 2023 (Rx1).

On March 20, 2023, the Petitioner attended a further orthopedic evaluation with Dr. Koutsky (Px3 p4-6). At this visit, Dr. Koutsky continued to recommend surgical intervention to address the meniscal tear and Petitioner's left knee impairment (Px3 p5). Dr. Koutsky continued Petitioner's sedentary/sitting restrictions and ordered further physical therapy and non-NSAID medication (Px2 p5-6). Petitioner continued to attend physical therapy between his orthopedic evaluations (Px5).

On April 17, 2023, Petitioner attended an orthopedic evaluation with Dr. Koutsky (Px2 p10-13). Dr. Koutsky examined Petitioner and continued to note crepitus and clinical varus deformity in the left knee (Px3. P11). Dr. Koutsky continued to recommend surgery and noted his disagreements with Dr. Dairyko's opinions regarding the need for surgery as a result of the October 15, 2022, work injury (Px3 p11-12). Dr. Koutsky continued Petitioner's sedentary/sitting restrictions, ordered an FCE and additional physical therapy and medications (Px3 p13).

On June 16, 2023, the Petitioner underwent the left knee surgery prescribed by Dr. Koutsky (T22, Px2 p9-11). During surgery, an unstable tear of the body and posterior horn of the medical meniscus

was noted and addressed surgically (Px2 p10). Petitioner was authorized off work and prescribed home health care with Metro Continued Care (Px2 p12, Px13).

Post-surgery, the Petitioner was treated by Metro Continued Care from June 17, 2023, to June 30, 2023, including wound care and physical therapy (T22-24, Px13). Petitioner was prescribed a DVT (deep vein thrombosis) device by Dr. Koutsky which was provided by Victory Enterprises II (Px12).

On June 27, 2023, Petitioner attended a post-surgery follow-up with Dr. Koutsky (T24, Pex.3 p14-16). Dr. Koutsky ordered physical therapy for post-surgical range of motion and strength in the left knee (Px3 p15-16). The Petitioner resumed physical therapy with Total Rehab after the surgery on July 10, 2023 (T24-25, Px5). Total Rehab provided various modalities for Petitioner including ultrasound stimulation, massage, electrical stimulation, and various exercises on his left knee (T25, Px5).

On August 1, 2023, Dr. Koutsky noted that the physical therapists at Total Rehab recommended further rehab and deferred transitioning to work conditioning for a later appointment (Px3 p21-23). Dr. Koutsky further ordered a left knee compression sleeve for Petitioner (T26, Px3 p20 23).

On August 25, 2023, the evidence deposition of Dr. Dairyko was taken (Rx3). On direct examination, Dr. Dairyko testified consistently with his narrative report that Petitioner had arthritis in the left knee which was not accelerated by the work injury of October 15, 2022 (Rx3 p5-19). On cross-examination, Dr. Dairyko was asked "Doctor, if you didn't believe that Mr. Doogan was a malinger or lying to you and he described left knee pain like he did when he stood up from the kneeling position, what is the cause of his knee pain?" to which Dr. Dairyko responded "well, I think he aggravated the arthritic change that was in his knee" (Rx3 p 37). On cross-examination, Dr. Daiyrko further testified that the aggravation of the arthritic knee from the October 15, 2022, injury produced pain and that the concomitant pain resulting in therapy and an injection was reasonable (Rx3 p38).

On August 29, 2023, the Petitioner returned to Dr. Koutsky for orthopedic evaluation (Px3 p17-19). Dr. Koutsky noted that the physical therapists at Total Rehab recommended further rehab and deferred transitioning to work conditioning for a later appointment (Px3 p17-19).

On September 26, 2023, Petitioner returned to Dr. Koutsky for orthopedic evaluation (Px3 p 24-26). Petitioner was transitioned from physical therapy to work conditioning (Px3 p24-26). On September 27, 2023, the Petitioner was discharged from physical therapy with Total Rehab (Px. 5). On October 12, 2023, the Petitioner began work conditioning with ATI Physical Therapy (Px14).

On November 20, 2023, the Petitioner returned to Dr. Koutsky for orthopedic evaluation (Px3 p27-29). Dr. Koutsky anticipated release to unrestricted work upon completion of work conditioning (Px3 p27-29).

On December 18, 2023, the Petitioner was examined by Dr. Koutsky and released to unrestricted work and placed at MMI (Px3 p30-32). Petitioner's appointment was left open, and he was instructed to return if needed (T28, Px3 p31). Upon his discharge, the Petitioner's left knee felt better and stronger (T28).

Since the December 18, 2023, discharge, the Petitioner continues to have issues with his knee from time to time including pain with walking and instability (T28-29). Petitioner continues to have difficulty squatting and flexing the left knee (T29). Petitioner did not have issues with squatting or flexing the left knee prior to the October 15, 2022, work injury (T30). Petitioner has never returned to work for the Respondent (T30). Petitioner has had no further formal medical care for his left knee since December 18, 2023. (T30). The Petitioner has no medical restrictions from bending, driving or kneeling. (T30 36)

The certified exhibits admitted into evidence indicate that for care and treatment received by the Petitioner for injuries sustained from the October 15, 2022 work incident, the Petitioner has incurred the following medical bills that retain balances:

ION and DuPage Spine Orthopedics- $34,422.26 - Pet. Exhibit 4

Total Rehab P.C- $10,261.00 - Pet. Exhibit 6

Total Rehab Therapy Partners - $7,814.00 – Pet. Exhibit 7

Midwest Specialty Pharmacy - $9,408.56 – Pet. Exhibit 8

Preferred Pharmacy - $273.72 – Pet. Exhibit 10

Premier Healthcare Services - $7,063.66 – Pet. Exhibit 11

Victory Enterprises II Inc. - $2,995.00 – Pet. Exhibit 12

Metro Continued Care - $7,764.00 – Pet. Exhibit 13

ATI Physical Therapy - $11,340.38 – Pet. Exhibit 14.

Total: $91,342.58

The balances as admitted are not reduced to the medical fee schedule and are not justified to consider the payments made by Respondent as itemized in Respondent's Exhibit 2.

CONCLUSIONS OF LAW

ISSUE C: ACCIDENT – IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator finds that on October 15, 2022 the Petitioner did not sustain an accidental injury to his left knee on that arose out of and was in the course of his employment with Respondent. The Petitioner was on duty and in the course of his employment that day but failed to prove a compensable accident.

The facts about the incident are not in dispute. The Petitioner was in the course of his employment as a bread delivery person. Further, the action/activity of getting up and down from a kneeling position on the floor is "incidental to the employment" of a bread delivery employee and arises

out of his employment. However, by his own testimony describing the action of getting up from a kneeling position was not notable to induce an injury.

The Petitioner described putting his left leg up first, with his right knee still on the floor. He described feeling pain in his knee. He specifically denied any "pop" or "snap". (T13) He testified that his "knee hurt when I stood up". (T12).

The Petitioner failed to articulate what specifically about the act of getting up unassisted from the floor caused a specific injury other than to generally make his knee hurt. Experiencing pain from getting up from the floor while on the job that allows him to continue his work activity for the rest of the work could not reasonably be considered an accident as it was the work activity itself.

The Arbitrator finds that the Petitioner did not articulate a compensable and accordingly failed to prove he suffered a compensable accident on October 15, 2022.

ISSUE F: CAUSAL CONNECTION - IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator finds that Petitioner's left knee condition as alleged from October 15, 2022, work activity was not the result of a compensable accident. Consistent with this finding his current condition related to his right leg is not causally related to the October 15, 2022, incident.

Incorporating the findings of law above regarding no accident, the Arbitrator finds Petitioner's current condition of ill being is not causally related to the October 15, 2022, incident.

When the Petitioner first sought medical attention on October 18, 2022, at Access Health, he complained of pain and swelling on the lateral side of his left knee. The diagnosis from Dr. Modi was a sprain of the collateral ligament of the left knee. (Px1 p1-4). When the Petitioner presented to ION on October 27, 2022, he similarly gave a history of 3 bumps, swelling and pain on the lateral side of his left knee, and reported that bumps had gone down since the work incident. (Px2 p1) He was ordered off work and to participate in physical therapy.

In physical therapy and to Dr. Koutsky on December 7, 2022, he reported stiffness of the knee joint and pain behind the knee cap. (Px2 p5) The Arbitrator notes that this is not consistent with the initial complaints to the lateral side of his left knee.

Dr. Koutsky suspected persistent bursitis and possible patellar tendinitis and impingement. (Px2 p5) He recommended an MRI. The MRI scan from January 19, 2023, showed tricompartmental degenerative changes and moderate effusion. The noted signal change in the medial meniscus was consistent with a possible tear. There was a partial ACL tear, no PCL tear and degenerative change to the lateral meniscus. There was no evidence of a collateral ligament tear. (Px3 p2)

Dr. Koutsky performed arthroscopic surgery on June 16, 2023, which involved a left knee arthroscopy, partial medial meniscectomy, debridement chondroplasty of the patellofemoral compartment, medial femoral condyle and the medial tibial plateau and a partial synovectomy of the suprapatellar pouch in the medial and lateral gutters. (Px3 p9)

The Petitioner was examined by Dr. Dairyko, orthopedic surgeon of Duly Health and Care on behalf of the Respondent as a Section 12 expert on March 6, 2023. Dr. Dairyko rendered his opinion that the incident described by the Petitioner, stocking the bottom shelf, and standing up from kneeling was not sufficient to aggravate or accelerate his degenerative knee condition. (Rx3 p64) He testified that he did not think the Petitioner was malingering or lying about experiencing pain when he stood up from the kneeling position, and that he had a temporary aggravation of the arthritic changes in his left knee. (Rx3 p38) Dr. Dairyko's opinion was that with the temporary aggravation of his arthritis he was back to baseline- or his pre-incident arthritic condition. (Rx3 p39) He testified that the diagnosis given to the Petitioner by his doctors at ION (bursitis or patellar bursitis) was swelling to the anterior or front of the patella/ patellar tendon and cause pain over the anterior or front part of the knee and does not pertain to the lateral side of the knee. (Rx3 p12)

The Arbitrator adopts the opinions of the Section 12 expert Dr. Dairyko, finding the basis of his opinions are grounded in the facts in the record, are most reliable and demonstrate that the Petitioner's complaints and medical treatment are not causally related to the work activities.

The Arbitrator finds that Petitioner's left knee condition as alleged from October 15, 2022, work activity was not causally related to the work activity including getting up from the floor from a kneeling position.

ISSUE L: TTD IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (L), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS THE FOLLOWING:

Consistent with the above findings of law including no accident, and no causation, no TTD is awarded related to the October 15, 2022, incident and Respondent paid TTD at the rate of $583.33 per week for 22.428 weeks from 10/18/2022- through 03/23/2023 in the amount of $13,083.25. (Rx1)

ISSUE J: MEDICAL BILLS - - IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J), WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS THE RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS THE FOLLOWING:

Consistent with the above findings of law the Arbitrator finds the medical expenses as alleged are not related to the October 15, 2022 alleged incident.

The Arbitrator notes that the Respondent has paid $23,296.58 to medical providers as shown in Rx2 related to the October 15, 2022, accident.

ISSUE NATURE AND EXTENT

Consistent with the above findings of law the Arbitrator finds the issue is moot.

ISSUE N: 9/16/18 CREDIT – IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (N), IS RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS THE FOLLOWING:

The Respondent is entitled to the following credits:

Respondent paid Temporary Total Disability benefits in the amount of $13,083.25 (22.428 weeks of TTD from 10/18/2022- through 03/23/2023) and accordingly, the Arbitrator finds that Respondent is entitled to a credit in the amount of $13,083.25 for TTD as shown in Rx1.

Respondent paid $23,296.58 to medical providers as shown in Rx2 related to the October 15, 2022 accident, the Arbitrator finds that the Respondent is entitled to a credit in the amount of $23,296.58.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC030386
Case Name	Mark Palmer Jr. v. Flynn Restaurant Group
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Commission Decision
Commission Decision Number	26IWCC0296
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Julie Pagano

DATE FILED: 10/26/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK PALMER,

Petitioner,

vs. NO: 24 WC 030386

FLYN RESTAURANT GROUP,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 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 Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $63,200.00. 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.

OCTOBER 26 2026

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

O: 10/21/26
CMD/jjm
045

/s/ *Raychel A. Wesley*
Raychel A. Wesley

/s/ *Frank J. Soto*
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC030386
Case Name	Mark Palmer Jr. v. Flynn Restaurant Group
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Julie Pagano

DATE FILED: 2/18/2026

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 18 2026 3.50%

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)

Mark Palmer
Employee/Petitioner

v.

Flynn Restaurant Group
Employer/Respondent

Case # **24** WC **030386**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **11/25/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/25/23**, 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 $**32,264.20**; the average weekly wage was $**829.38**.

On the date of accident, Petitioner was **30** 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 **$16,199.34** for TTD, $**1,779.26** for TPD, $**0** for maintenance, and $**all paid** for medical benefits, for a total credit of $**17,978.60**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $57,395.70 as provided in Section 8(a) of the Act pursuant to the medical fee schedule. Respondent shall be provided a credit of $18,311.59 for amounts paid.

Respondent shall pay lost time benefits from 1/3/25 to 11/25/25, representing 46 5/7 weeks at $552.91/week pursuant to Section 8(b) of the Act.

Respondent agreed to pay the shortfall on past TTD totaling $4,969.76 and parties shall calculate the past shortfall on TPD.

Respondent shall provide the prospective medical care and surgery recommended by Dr. Bradley as Petitioner sustained a work-related accident on 11/25/23 necessitating medical care.

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

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

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

Bradley D. Gillespie
Signature of Arbitrator

FEBRUARY 18 2026

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK PALMER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case 24 WC 030386**
	)	
FLYNN RESTAURANT GROUP,	)	
	)	
Employer/Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter proceeded to hearing on November 25, 2025, in Collinsville, Illinois. (Arb. Ex. #1). Mark Palmer [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on January 29, 2025, alleging accidental injuries while working for the Flynn Restaurant Group (hereinafter "Respondent"] occurring on November 25, 2023. (Arb. Ex. #2). The following issues were in dispute:

- Medical causation
- Past TTD
- Past medical bills
- Prospective medical treatment

FINDINGS OF FACT

Mark Palmer II, Petitioner, is a 32-year-old Pizza Delivery Driver who began working for Pizza Hut/Flynn Restaurant Group in approximately October 2022. (Tr. p. 12) Petitioner began as a pizza delivery driver but was then promoted to manager/pizza delivery driver. (Tr. pp. 13-14) Petitioner worked approximately 25 to 50 hours per week, and his activities included managing others within the store; taking deliveries; making pizzas; working the ovens; answering the phones; working the computer up front; and taking orders. (Tr. p. 14)

Petitioner noted that his job required that he be on his feet 50% up to the entire shift. (Tr. p. 15) He noted that leading up to this accident, he was able to perform all of his activities as a manager and a delivery driver without any problems. (Tr. p. 18)

On November 25, 2023, Petitioner was making a delivery in the O'Fallon area. As he was walking back from the delivery, he stepped down and his left foot slipped off a crumbling step causing him to roll his ankle landing with his full body weight on this leg. (Tr. p. 15) Petitioner noted that he did not fall to the ground as he was able to hop and lean against his car without completely falling to the ground. (Tr. pp. 15-16)

Petitioner noticed symptoms in his left ankle with tenderness, pain and a dull ache. (Tr. p. 16) Petitioner testified that 10 or 11 years prior, his foot was run over by a forklift while working at Mernard's but that injury only involved his foot and not his ankle. Otherwise, Petitioner testified that he had no prior problems or injuries to his left ankle. (Tr. pp. 17-18)

Petitioner advised his employer of this injury and immediately sought treatment at St. Elizabeth's Urgent Care. (Tr. p. 19) Medical records record that on November 25, 2023, Petitioner was seen at St. Elizabeth Hospital Convenient Care with a history of having sustained injury to his left ankle one hour prior to the visit while descending a step in an awkward fashion and rolling his ankle to the outside. He was noted to have aching pain that was worse with touch and walking. (PX 3 p. 33)

Petitioner returned to St. Elizabeth due to ongoing swelling and bruising that had been worsening. He was noted to have been using crutches leading up to the visit. Following evaluation, Petitioner was referred for further evaluation of the injury. (PX 3 p. 5)

Petitioner was referred to a podiatrist and began treatment with Dr. Louis Aquino. Petitioner testified that when he saw Dr. Aquino, he had massive bruising all up and down his calf, tenderness, soreness and weakness within the ankle. (Tr. p. 20) The medical records record that Petitioner was initially evaluated by Dr. Aquino on December 7, 2023. Dr. Aquino recorded that Petitioner had a work injury wherein he twisted his left ankle but did not reveal a fracture. He was later given a walker boot cast and crutches but continued to have ongoing discomfort. (PX 4 p. 56) Following examination, Dr. Aquino diagnosed a displaced dome fracture of the left talus. (PX 4 p. 58)

Petitioner continued to follow up with Dr. Aquino and was noted to have ongoing symptoms in spite of injections and physical therapy. As a result, on July 1, 2024, Dr. Aquino took Petitioner to surgery for a diagnosed condition of left ankle synovitis with adhesions; sinus tarsi syndrome and anterior exostosis of the tibia and talus in the left ankle. Dr. Aquino performed an arthroscopic debridement of the left ankle with exostectomy anterior tibia and talus as well as excision of the inflammatory tissue at the sinus tarsi. (PX 4 pp. 17-18).

Postoperatively, Petitioner followed up with physical therapy at Athletico. He was discharged on November 6, 2024, with indication that he had only been able to achieve 3 of the 8 goals set forth by the physical therapist. The therapist noted that Petitioner was unable to climb stairs frequently; walk frequently; walk on uneven surfaces occasionally; achieve an overhead lift of 25 pounds; or carry 25 pounds for 40 feet. (PX 6 p. 2) The therapist noted that Petitioner's functional improvements were commensurate with that stage of healing and that he had been providing good effort during treatment. (PX 6 p. 3) The therapist noted that Petitioner was only partially recovered but had been transitioned to self-management to address the remaining deficits.

Following the surgery, Petitioner continued to have similar problems in the ankle that included pain, weakness and soreness. (Tr. p. 21) Petitioner was sent for physical therapy and was noted to have pain along the Achilles tendon while performing physical therapy. (Tr. p. 22)

Petitioner was last evaluated by Dr. Aquino in October 2024. Petitioner testified that he was having significant problems within the ankle. Regardless, Dr. Aquino released him from his care and allowed him to return to work full duty. (Tr. p. 23) Petitioner testified that he did not believe he was capable of returning to work full duty and therefore he sought a second opinion with Dr. Matthew Bradley. (Tr. pp. 23-24)

On November 4, 2024, Petitioner was examined by Dr. Bradley who reported that Petitioner continued to have pain along the entire front portion of his foot near the myotendious junction of his Achilles that began following the work accident. (PX 1 p. 77) Dr. Bradley testified that when a patient rolls their ankle similar to Petitioner, the most common ligament injured is the ATFL or anterior talofibular ligament. (PX 1 p. 12) As a result, Petitioner's mechanism of injury was consistent with his presentation and symptoms. (PX 1 p. 13)

Dr. Bradley reviewed the MRI from January 2024 and agreed with the radiologist that it read as showing an abnormal ATFL that was inflamed and had fluid around it. Although the ATFL was not torn, it was sprained and stretched and showed a microfracture or bone contusion of the ankle where two bones had impacted on another. (PX 1 p. 14-15) Dr. Bradley diagnosed Petitioner with having ongoing left ankle pain status post-surgery.

At the time of the initial visit, Dr. Bradley attempted an injection into the foot which offered no lasting relief. (PX 1 pp. 19-21) Dr. Bradley provided Petitioner with work restrictions of desk work only and recommended a repeat MRI of the ankle. (PX 1 pp. 21-22).

Petitioner testified that Dr. Bradley provided work restrictions of desk work only. Petitioner testified that he provided these restrictions to General Manager Demi Scott, as well as the workers' compensation nurse case manager Victoria. (Tr. pp. 24-26) Petitioner testified that he was allowed to return to work on light duty. Petitioner was placed in a chair by the computer to answer telephone calls and place orders into the computer. (Tr. p. 27)

Additionally, Petitioner was continuing to work his duties as manager overseeing other activities within the store and making sure everyone was doing what they were supposed to be doing. (Tr. pp. 26-27) Petitioner testified that he did not need to fill out any additional paperwork other than providing his manager the work restrictions by Dr. Bradley. Petitioner testified that as part of his work activities, he was rolling around the store in a chair which caused problems in his ankle from overuse. (Tr. p. 29) Petitioner testified that he did not consider desk work to include having to roll around the restaurant in a chair using his injured leg and ankle to push off because it caused him physical pain in that ankle. (Tr. pp. 50-51)

On January 1, 2025, General Manager Scott advised him that if he could not perform more than just desk work, they were going to fire him. A couple of days later, Petitioner noted that he had been removed from the schedule. (Tr. p. 31) At the time of this termination, he was still on work restrictions by Dr. Bradley that included desk work only. (Tr. p. 32) Petitioner testified that he has never technically been terminated but simply is no longer on the schedule. *Id*.

On January 27, 2025, Petitioner was sent to Dr. John Krause by Respondent as part of a Section 12 evaluation. Petitioner testified that Dr. Krause spent approximately 10 minutes with him and agreed with Dr. Bradley that Petitioner needed an updated MRI. (Tr. p. 33) The report from Dr. Krause recorded that Petitioner had a history of a left ankle sprain with a talar bone bruise as well as being status post left ankle arthroscopy of debridement and open sinus tarsi excision. (RX p. 14)

Dr. Krause read the MRI of January 2, 2024, as showing fluid in the ankle joint which he described as a sign of inflammation from an injury. (RX 1 p. 13) He believed that the ATFL was intact but testified that for him it was not visible. *Id*. Dr. Krause diagnosed an ankle sprain and believed that Petitioner's condition would "probably get better without the surgery." (RX 1 p. 15)

On February 11, 2025, Petitioner underwent an MRI of his left ankle at MRI Partners which was read as showing linear abnormal signal involving the anterior lateral soft tissues extending into the tarsal sinus likely representing postoperative scar. (PX 2).

Dr. Bradley reviewed the MRI and read it similarly to the radiologist as showing inflammation around the ATFL ligament. (PX 1 p. 22) He testified that the findings were consistent with Petitioner's area of pain at the ATFL as well as the mechanism of injury. (PX 1 p. 23)

Dr. Krause read the MRI of February 11, 2025, showing that the edema in the talus as having resolved. However, he testified that it was hard to assess the changes in the fluid in the ankle as that arthrogram required that they inject fluid into the ankle. (RX 1 p. 17) On February 18, 2025, Dr. Krause placed Petitioner at maximum medical improvement in spite of Petitioner advising him of having ankle pain; increased symptoms when on it for more than 10-15 minutes; and increased symptoms with walking/use. (RX 1, pp. 27-29)

Dr. Bradley testified that he re-examined Petitioner on March 4, 2025, to review the MRI. Petitoner's symptoms and physical examination findings remained unchanged. As a result, Dr. Bradley diagnosed Petitioner with having chronic ankle instability that had failed non-operative treatment of injections and physical therapy. (PX 1 p. 24). Dr. Bradley described the ligament as being like an elastic band on a pair of old boxes that stopped functioning properly. (PX 1 p. 25-26)

Dr. Bradley testified that the next step would be surgery that is a Modified Brostrom procedure that would repair that ligament that was not functioning properly and restore function to the ligament. (PX 1 p. 27) Dr. Bradley testified that until this surgery was completed, he would restrict Petitioner to desk work only and any kind of injury would put him at risk of injuring the ankle further. (PX 1 p. 28)

Petitioner testified that when he was evaluated by Dr. Krause, the doctor did not make any mention of his ability to return to work, nor did he provide Petitioner with a work slip. (Tr. p. 34) Petitioner testified that on January 29, 2025, he received an email from Janice Kennedy from Flynn Group. Petitioner testified that this was the first time that he had heard from

Respondent since he last worked there on January 3, 2025. (Tr. p. 34) Within the email, Kennedy offered Petitioner a job to return to work full duty as a delivery driver citing the release by Dr. John Krause. (Tr. p. 35; PX 8)

Petitioner responded to this email by advising Kennedy that he was going to follow the work restrictions from his treating doctor, Dr. Bradley. (Tr. p. 35; PX 9) Petitioner testified that given the condition of his ankle at that time, he did not believe that he could safely return as a delivery driver as he was not confident that he could walk through yard or take steps. Further, he was concerned that if he took one wrong step, he could reinjure the ankle and cause further problems. (Tr. pp. 35-36) Petitioner testified that he was never offered light duty desk work at a static chair. Additionally, he noted that he was not terminated and was never written up for insubordination. Instead, the employer simply stopped putting him on the schedule. (Tr. p. 60)

Petitioner received a response from Kennedy thanking him for his response and advising that they would let him know shortly thereafter whether they could accommodate the restrictions. (Tr. p. 37; PX 10) Petitioner testified that he has not received any additional contact from Kennedy or from the employer leading up to trial. (Tr. pp. 37-38)

Petitioner continued to follow up with treatment by Dr. Bradley who kept him on desk work only leading up to trial. (Tr. p. 38) Petitioner has not followed up with Dr. Bradley as the doctor's office is waiting for approval to move forward with surgery on the ankle. (Tr. p. 57)

Petitioner testified that he continues to have symptoms within the ankle that have never gone away. (Tr. p. 39) He testified that he is wanting to undergo the surgery that has been recommended by Dr. Bradley in order to be able to walk normal again and not be in pain all the time. (Tr. p. 40) Petitioner testified that he continues to have pain all around the ankle that is in the same place as it was following the accident.

Petitioner describes having pain that was a 1/2 when he is seated. However, if he stands or walks too much, the pain can go as high as a 6/7 and he knows that he must get off of that foot. (Tr. p. 41) Petitioner testified that he believes that he can stand or walk for about 15 minutes before having increased symptoms in the ankle. He noted that he has to plan all of his shopping to be no more than 15 minutes or he has increased symptoms within the ankle. (Tr. p. 42)

Additionally, Petitioner testified that he is unable to lift any significant weights. He performed some lifting activities at physical therapy but did no more than 10 or 15 pounds as he did not want to risk lifting anymore because of the symptoms in the ankle. (Tr. p. 42) Petitioner testified that he continues to have problems going up and down steps and must rely on his non-injured foot. (Tr. p. 43) Further, Petitioner testified that he is unable to run anymore but was able to do so before the accident. (Tr. pp. 43-44)

Petitioner testified at the time of trial that there were medical bills that remain outstanding. These medical bills were marked in Petitioner's Exhibit #7 and included the following:

Advanced Surgical Center of Sunset Hills - $19,129.16

Athletico - $13,341.00
Central Illinois Radiological Associates – $58.00
CEP America Illinois Hospitalists - $901.00
Metro East Orthopedics – $2812.76
Metro West Anesthesia Group – $981.00
MRI Partners of Chesterfield – $5657.78
HSHS Saint Elizabeth's Urgent Care – $1206.00
The Foot and Ankle Center – $8879.00
Vital Hospital Systems – $4250.00
WCP Laboratories – $180.00

CONCLUSIONS OF LAW

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. ***A**.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

As the Appellate Court has pointed out, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205, 734 N.E.2d 900, 248 Ill. Dec. 609 (2000). Here, there was no record of hernia problems or symptoms prior to the work accident. The accident caused symptoms that persisted through the time of the arbitration hearing.

In the present case, it is admitted that Petitioner sustained an injury to his left ankle when his foot slipped off a crumbling step causing him to roll his ankle with the full weight of his body on the ankle. Following this work accident, Petitioner was seen at St. Elizabeth Hospital and by Dr. Aquino with the same history of onset of symptoms following the work accident.

Petitioner underwent surgery by Dr. Aquino but was noted to have significant ongoing pain and functional limitations that were identified by the physical therapist. The same symptoms continued through his medical treatment with Dr. Bradley who noted ongoing pain, swelling and instability in the left ankle. Dr. Bradley testified that he agreed with the MRI radiologist, Dr. Ruyle, who recorded ongoing abnormalities at the ATFL ligament in spite of the surgery. Based upon the symptoms, physical examination and radiographic findings, Dr. Bradley recommended surgery for the left ankle to correct the pain and instability in the ankle.

Alternatively, Dr. Krause testified that he did not see the same damage in the MRI but admitted that he could not differentiate the fluid in the ankle from the fluid injected as part of the arthrogram. Dr. Krause placed Petitioner at MMI in spite of Petitioner continuing to have ongoing pain and instability within the ankle that was documented during physical therapy and by Dr. Bradley.

The Arbitrator concludes that the Petitioner testified credibly regarding the work accident and ongoing symptoms stemming from the work accident. Further, the Arbitrator finds the medical opinions of Dr. Bradley to be more credible than Dr. Krause. Dr. Bradley's medical conclusions best comport Petitioner's ongoing symptoms; the radiologist's conclusions of ongoing abnormalities at the ATFL ligament; and the ongoing functional limitations noted by the physical therapist.

As a result, the Arbitrator concludes that Petitioner's current condition remains medically causally related to the work accident of November 25, 2023. Petitioner's change in physical status, onset of symptoms, and onset of functional limitations began following the work accident and continued up through trial necessitated the medical recommendations for surgery to his left ankle.

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

The Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

Petitioner testified to medical treatment that he undertook following this work accident to try to reduce or resolve the symptoms in his left ankle that began following this work accident. Petitioner testified to the medical bill summary set forth on Petitioner's Group Exhibit #7. Respondent agreed to pay the reasonable and related medical bills set forth in this Group Exhibit pursuant to the Fee Schedule.

As a result, the Arbitrator finds and concludes that Respondent shall be responsible for payment the medical expenses contained in Petitioner's Group Exhibit #7, pursuant to the Illinois Medical Fee Schedule, as provided in sections 8(a) and 8.2 of the Act.

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

The Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

The Arbitrator finds that Petitioner is entitled to further medical treatment by Dr. Bradley. The credible medical evidence supports the need for further medical care in the form of surgery with the dispute being the extent of the surgery. Dr. Bradley recommended surgery in the form of a ligament surgery based upon his physical examination; Petitioner's symptomology/functional limitations; and most significantly the radiographic findings.

Dr. Bradley agreed with Dr. Ruyle's interpretation of the MRI findings that showed ongoing defects at the ATFL ligament consistent with Petitioner's ongoing symptoms and functional limitations. Alternatively, Dr. Krause disagreed with Dr. Ruyle's interpretation of the MRI findings but instead only noted an ankle sprain while admitting that he was unable to determine the amount of fluid still in the ankle. Moreover, Dr. Krause failed to address Petitioner's ongoing pain and instability that began as a result of the work injury.

Based upon the foregoing, the Arbitrator finds Dr. Bradley to be more credible than Dr. Krause. Dr. Bradley's conclusions best comport with the MRI findings and address Petitioner's ongoing pain and instability in his left ankle. As a result, Petitioner is entitled to prospective medical care consistent with the recommendations by Dr. Bradley.

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

An employee is temporarily totally incapacitated 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. *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.

Following the work accident of November 25, 2023, Petitioner was provided either work or light duty restrictions by his treating doctors including Dr. Aquino and Dr. Bradley. When Petitioner was provided light duty restrictions, his work was accommodating the work restrictions for the most part. However, Petitioner testified that Respondent had him wheel around in a desk chair that required that he use his injured ankle which increased his symptoms.

Petitioner continued to work this light duty to the best of his abilities until January 3, 2025, when he was advised by his General Manager that he would have to return to work full duty or be terminated. Petitioner was not placed back on the work schedule beyond January 3, 2025. Following the Section 12 evaluation with Dr. Krause, Petitioner was contacted by Respondent and offered a job within the full duty release provided by Dr. Krause. Petitioner advised Respondent that he intended to remain within the work restrictions provided by his treating doctor. He was

never contacted again by Respondent with an offer of work withing the work restrictions by Dr. Bradley.

Petitioner testified that given the ongoing pain and instability in his left ankle, he did not feel that he could safely return to a job as a delivery driver as it required that he be on his feet for extended periods; climb steps; and walk on uneven terrains. Petitioner was concerned that such activities could subject his ankle to further injury and were inconsistent with his treating doctor's work restrictions.

The Arbitrator finds that the work restrictions provided by the treating doctor, Dr. Bradley, to be appropriate. Petitioner continued to have ongoing pain and instability in his left ankle and therefore work restrictions were reasonable until this medical condition can be appropriately treated. Therefore, the Arbitrator finds and concludes that Petitioner is entitled to temporary total disability benefits for the period of January 4, 2025, to November 25, 2025, totaling 46 5/7 weeks at the TTD rate of $552.91/week. Respondent agreed to pay for all of the past temporary total disability and temporary partial disability benefits prior to this date of January 4, 2025.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC003191
Case Name	Jeffrey Shapiro v. Marino Chrysler Jeep Dodge Uptown Motors
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0297
Number of Pages of Decision	27
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Hayley Graham
Respondent Attorney	Brad Antonacci

DATE FILED: 10/26/2026

/s/Amylee Simonovich, Commissioner
Signature

DISSENT

/s/Kathryn Doerries, Commissioner
Signature

26IWCC0297

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey Shapiro,

Petitioner,

vs. NO: 24 WC 003191

Marino Chrysler Jeep Dodge Uptown Motor,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the first full sentence on page 13, striking the reference and citation to the *Cook v. Indust. Comm'n* case. While the evidence in the case at hand supports a change in condition after Petitioner's repetitive actions on January 30, 2024, we do not see the need to utilize a chain of events analysis, when we have a credible medical accident/causation opinion. The Commission agrees with the Arbitrator that Petitioner had a pre-existing condition that was aggravated by his repetitive actions at work. Petitioner's treating physician, Dr. Sampat, noted a history of an injury at work on January 30, 2024, when Petitioner would "repetitively get in and out of vehicles which caused the onset of significant low back pain that radiates down the left hamstring and posterolateral lower leg into the foot [*sic*] associated numbness and tingling." PX2, p.1. Based upon this history and his physical examination of Petitioner, Dr. Sampat opined, "The mechanism of injury as described as [*sic*] a competent mechanism to result in lumbar radiculopathy." PX2, p.2. The history Petitioner provided to Dr. Sampat was also consistent with the history provided to Dr. Khan, wherein Petitioner reported that on January 30, 2024, "he was working as an auto mechanic on modified duty due to his right hand injury…This required repetitive door opening, prolonged standing, repetitive climbing in and out of the motor vehicles and consequently resulted in lower back pain with left greater than right lower extremity pain that developed toward the end of the day." PX3, p.1. The history Petitioner provided to Dr. Sampat was further supported by the video of Petitioner's actions during the day on January 30, 2024.

Based upon the foregoing, we find that Dr. Sampat's opinion regarding accident and causation was sufficient to support Petitioner's claim of a work-related repetitive trauma.

Respondent's Section 12 examiner, Dr. Graf, questioned a causal connection between Petitioner's condition of ill-being and a work accident on January 30, 2024. This was based upon his finding that Petitioner "getting in and out of cars" and the four-hour video surveillance he reviewed did not demonstrate a traumatic incident. However, Petitioner is not claiming a single traumatic event, but rather a repetitive trauma, which may not be identifiable on video as a traumatic incident. As Dr. Graf's report does not demonstrate he had an adequate understanding that the basis for the claim was that of a repetitive trauma, we do not provide much weight to his opinion on the issue of causation.

Additionally, the Commission modifies the first sentence of the last paragraph relating to surveillance on page 9 of the Arbitration Decision, striking "January 23, 2024" and replacing it with "February 23, 2024".

The Commission modifies the citations on page 12 and 13 of the Arbitration Decision for consistency, striking the reference to "Industrial Com'n of Ill" and "Industrial Com'n" in the first paragraph on page 12, striking, "Industrial Commission" and "Industrial Com'n" in paragraph three on page 12, striking "Industrial Com" in the first line on page 13, and replacing all the partially stricken citations with "Industrial Comm'n".

The Commission modifies the first sentence of the last full paragraph on page 10 of the Arbitration Decision, striking "of 25 vehicles". Likewise, the Commission modifies the last paragraph on page 11 of the Arbitration Decision, striking "25 times" and "26 instances of" and the first full paragraph of page 13 of the Arbitration Decision, striking, "at least 26 times".

The Commission modifies the first paragraph of Order section of the Arbitration Decision, striking, "Section 8(a)" and replacing it with "Section 8(b)".

Finally, the Commission further modifies the first paragraph of the Order section of the Arbitration Decision, striking "13 weeks" and replacing it with "13 1/7 weeks".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 30, 2026, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits in the amount of $1,244.17/week for 13 1/7 weeks, commencing on January 31, 2024 continuing through May 1, 2024, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner permanent partial disability benefits in the amount of $1,024.87/week for 25 weeks, because the injuries sustained caused the 5% loss of use of the person as a whole, as provided in Section 8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay reasonable and necessary medical services of $101,791.40, as provided in Sections 8(a) and 8.2 of the Act.

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

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

OCTOBER 26 2026

o: 8/25/2026
AHS/kjj
051

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

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

Dissent

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence differently and would find that Petitioner failed to prove he sustained a lumbar spine injury arising out of and in the course of his employment. In this case, Petitioner alleges he injured his lumbar spine due to repetitive trauma attributed to frequent climbing in and out of motor vehicles while working light duty for one day at Respondent's auto dealership on January 30, 2024. For the reasons set forth below, I find the claim not credible as the video evidence in this case conflicts with the alleged frequency of the purported injury producing activity. Additionally, the physical maneuvering described by Petitioner, and which is alleged to have contributed to the repetitive trauma, conflicts with the video evidence. Finally, reliance on Petitioner's treating physician's causation opinion is misplaced absent a proper foundation for the opinion and would find Respondent's Section 12 examining physician's opinion more persuasive. For these reasons I would reverse for failure to prove a compensable accident under a repetitive trauma theory.

At the time of the alleged injury, Petitioner was age 59 and had worked as a journeyman mechanic for over 40 years, of which he had been employed by Respondent the past 16½ years. His job duties included road testing, diagnosing automobile problems, and performing auto repair. Petitioner had previously injured his right wrist in a work-related accident, and, after being off work for about a month, returned to work with light duty restrictions on January 30, 2024, the day of the subject accident. Petitioner wore a wrist brace while working that day and there is no allegation that those restrictions were violated on January 30, 2024. Petitioner testified his light duty work was limited to driving cars and assisting other technicians around the shop if help was

needed with diagnosing vehicular problems. In that capacity, Petitioner testified he drove maybe 20-25 vehicles on the dealer premises. Petitioner was asked the following question and responded:

> Q. And so on January 30th of 2024 was there anything unusual that happened while you were working that date?
>
> A. Um, well, I mean, I was driving a bunch of cars, maybe 20, 25 cars, so I was getting in and out of the cars. And to get in and out of some of these Jeeps, I can't use my wrist. I usually would grab a hold of the wheel and pull myself, and I couldn't do that, so I was jumping in and out of the vehicles to get in and out of the cars.(T. 12)

Petitioner testified that getting in and out of the cars was awkward due to the limited use of his injured right wrist. (T. 12) Petitioner further testified his wrist injury necessitated that he jump in and out of the vehicles while entering and exiting the driver's seat. (T. 12) Petitioner also noted his height of 5'6" and explained that he typically used his right arm for leverage when getting in and out of vehicles, particularly when driving the Jeeps which sit "much higher" compared to his personal vehicle. (T. 51) Petitioner testified he was unable to use his right arm to pull himself up or ease himself down out of the vehicles. (T. 15)

When asked what he noticed about himself while working on January 30, 2024, Petitioner testified, "the longer the day went on, the more my back started hurting." (T. 13) He did not identify a timeframe at which the back pain first became noticeable. Petitioner testified the pain was localized in the left lower back and then the pain began to radiate a little bit down the left leg. Petitioner testified he had difficulty straightening up and getting out of bed the next morning and he called his supervisor. (T. 15-16)

On cross-examination, Petitioner testified he did not lift anything heavy and did not have a fall or traumatic injury. (T. 27) Petitioner agreed he was not carrying anything when getting in and out of the vehicles that day. (T. 28) Petitioner reiterated he could not just slide into the vehicles without the use of his right hand and testified he jumped up into and out of the vehicles. (T. 29) Petitioner further testified he started working at 8:00 a.m. (T. 34) According to Petitioner's timesheet entry for the day in question, Petitioner clocked in at 10:00 a.m. and worked until 4:22 p.m., for a total of 6.3667 hours worked. (RX4) When confronted about his start time, Petitioner replied, I wasn't sure." (T. 34) Petitioner further testified he first discussed his back pain with a co-worker, Dan Sebo, towards the end of the day (T. 29-30)

Respondent admitted into evidence security camera video overlooking the shop area showing Petitioner holding his back around the time of 11:42:48 in the morning. (RX2-D) In the video, Petitioner was seen talking to Dan Sebo who was seated in a vehicle with the driver's window down several yards away and as soon as Dan Sebo drives off Petitioner places the back of his left hand behind his lower back and briefly rubs the lumbar region just above the belt-line. (RX2-D) The video suggests Petitioner was exhibiting pain behavior on the left side of his lower back at 11:42 a.m. or about one hour and 42 minutes after Petitioner clocked in that day and before driving any vehicles.

The supervisor, Bob Whiteman, completed an Incident Report dated January 31, 2024. (RX3) Per the written incident description, Mr. Whiteman reported that Petitioner "called Bob Whiteman at 8:30 a.m. to inform that he could not get out of bed." Mr. Whitman further reported that Petitioner "stated he was going to the doctor to get checked out." Below that, Mr. Whiteman also indicated, "No witnesses. He could not say how or where he hurt himself." (RX3) At trial, Mr. Whiteman contradicted Petitioner's testimony regarding the number of times he got in and out of vehicles. Mr. Whiteman testified "that's an extremely high number" when asked if he agreed Petitioner got in and out of 25 vehicles that day. (T. 71-72) Mr. Whiteman further testified the light duty work Petitioner was asked to perform "would not require that many times in and out of a vehicle." (T. 72)

Respondent admitted video evidence in this case which was a video recording of the majority of Petitioner's workday, beginning at 10:40 a.m. and ending at 4:23 p.m. (RX2A, RX2B, RX2C, RX2D, RX2E, RX2F, RX2G, RX2H, RX2I, part 1, and RX2I, part 2) Based on my review of the video evidence, Petitioner can be seen spending the overwhelming majority of his time walking from one location in the shop to another location in the shop, standing around, speaking with co-workers, peering into the vehicles, examining the engines of vehicles parked with their hoods propped open, and infrequently getting in or out of vehicles. Based on my review of the video, there is no credible evidence in the videos of awkward jumping or maneuvering into and out of vehicles. Petitioner is seen sliding in and out of vehicles in a normal fashion, contrary to the alleged jumping he described.

In repetitive trauma cases, the issues of accident and causation are intertwined with both issues resolved together. *Boettcher vs. Spectrum Property Group*, 99 IIC 0961; 1999 Ill. Wrk. Comp. LEXIS 409; *Simpson vs. State of Illinois Department of Human Services*, 18 IWCC 255; 2018 Ill. Wrk. Comp. LEXIS 108. A claimant seeking compensation under a repetitive trauma theory "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n,* 176 Ill. App. 3d 186, 192, 530 N.E.2d 1135 (1988). Claimants alleging injury based on repetitive trauma must still meet the same standard of proof as in claims involving a single traumatic accident. *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209, 614 N.E. 177 (1993). There must be a showing that the disabling injury or condition was related to the employment and not the result of a normal degenerative process. *Peoria County Bellwood Nursing Home vs. Industrial Commission*, 115 Ill. 2d at 530 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209 (1993).

In assessing causality, the Commission may consider evidence, or the lack thereof, of the manner and method of a claimant's job to determine if the employment duties were sufficiently repetitive to establish a compensable injury. *Williams vs. Industrial Comm'n*, 244 Ill. App. 3d 204, 211, 614 N.E.2d 177 (1983). The Commission may also consider the degree to which the employment activity varied. *Id.* at 209. It is also well settled that there is no minimum legal requirement that a certain percentage of the workday be spent on repetitive tasks in order to establish the repetitive nature of a claimant's job duties. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773 (2005).

Claimants generally rely on expert medical testimony to establish a causal connection. See

Peoria County Bellwood Nursing Home, 115 Ill. 2d at 530. Though medical testimony is not always required, it is firmly established that expert medical testimony is necessary where the questions involved are within the experts' knowledge only and outside the knowledge of laypersons. *Nunn v. Industrial Com.*, 157 Ill. App. 3d 470, 510 N.E.2d 502 (1987) Expert testimony must be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Comm'n*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC. If an expert's opinion is based on facts not properly supported by the record, then the opinion should be disregarded. *Caterpillar Tractor Co. vs. Industrial Comm'n*, 98 Ill. 2d 400, 456 N.E.2d 1366 (1982) Additionally, if the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue and may look "behind" the opinion to examine the underlying facts.

Based on the evidence in this case, I would find Petitioner has failed to prove his job duties were sufficiently repetitive or performed in such a manner as to cause and/or aggravate his low back condition. In support of this determination, I rely on the video surveillance of the Petitioner's sole workday in question. Petitioner is seen performing a variety of activities including standing, walking, bending, driving, and holding items. The video is irrefutable evidence that Petitioner performed a variety of activities and changes positions frequently with rest breaks in between the different activities including driving vehicles. Moreover, Petitioner's testimony that he drove 20 or 25 vehicles is disputed by the video evidence showing seven vehicles over the course of his workday. I further rely on the supervisor's Incident Report where it was noted Petitioner did not have an explanation as to how or when he hurt his back.

On the issue of causation, Dr. Sampat's opinion lacked adequate foundation. When Petitioner first presented to Dr. Sampat for treatment on February 6, 2024, Petitioner reported he would "repetitively get in and out of vehicles which caused the onset of significant low back pain that radiates down the left hamstring and posterolateral lower leg into the foot associated with numbness and tingling." (PX2) Dr. Sampat opined that the mechanism of injury "as described" was a competent mechanism to result in lumbar radiculopathy. (PX2) Dr. Sampat's opinion, however, is without merit. Dr. Sampat did not view the video surveillance from January 30, 2024, did not state how many times Petitioner got in and out of vehicles, did not state if he was aware of the variety of the activities Petitioner performed on that day, or if he knew there were rest periods in between driving the vehicles. Dr. Sampat's opinion relies on Petitioner's conclusion his job activities were "repetitive" and based on this history, provides a causation opinion. However, whether a job activity is repetitive is a question of fact for the Commission and the opinion must be supported by the facts and in this case they are refuted by the video evidence. Moreover, Dr. Sampat did not review the supervisor's Incident Report wherein it was noted Petitioner did not have an explanation as to how or when he hurt his back, As such, Dr. Sampat's opinion was based on incomplete information and I would give it very little weight.

I would find Respondent's examining physician Dr. Graf more persuasive in this case. Dr.

Graf viewed the video surveillance from the workday in question. After viewing four hours of video, he opined that getting in and out of cars would not be considered a traumatic event. Dr. Graf had a greater understanding of the specific work activities Petitioner had performed that day and thus his opinion should be given greater weight.

Based on the above, and the record taken as a whole, I would reverse the decision of the Arbitrator and find that Petitioner failed to prove by a preponderance of the evidence that he suffered accidental injuries arising out of and in the course of his employment on January 30, 2024, and likewise failed to prove that his current condition of ill-being relative to his lower back is causally related to his employment. For these reasons, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC003191
Case Name	Jeffrey Shapiro v. Marino Chrysler Jeep Dodge Uptown Motors
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Hayley Graham
Respondent Attorney	Brad Antonacci

DATE FILED: 1/30/2026

/s/Charles Watts, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 27 2026 3.53%

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

Jeffrey Shapiro
Employee/Petitioner

v.

Marino Chrysler Jeep Dodge Uptown Motors
Employer/Respondent

Case # **24** WC **3191**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **11/18/2025**. 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 **Janury 30, 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 $**97,045.00**; the average weekly wage was $ **1,866.25**.

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

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

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

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

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

ORDER

*Respondent shall pay Petitioner temporary partial disability benefits of $***1,244.17***/week for* **13** *weeks, commencing* **1/31/24** *through* **5/01/24***, as provided in Section 8(a) of the Act.*

*Respondent shall pay Petitioner permanent partial disability benefits of $***1,024.87***/week for* **25** *weeks, because the injuries sustained caused the* **5** *% loss of the person as a whole, as provided in Section 8(d)2 of the Act.*

*Respondent shall pay reasonable and necessary medical services of $***101,791.40***, as provided in Sections 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.



Signature of arbitrator

JANUARY 30 2026

FINDINGS OF FACT

This matter was tried to completion on November 18, 2024. The issues in dispute are accident, causation, average weekly wage, medical bills, temporary total disability and nature and extent. Six witnesses, including the Petitioner, testified.

Petitioner, Jeffrey Shapiro, 61, testified he worked as a journeyman mechanic for Respondent, Marino Chrysler Jeep Dodge Uptown Motors, for more than 16 years until his retirement on November 15, 2025. (T.8-9). He worked as a mechanic for more than 40 years. (Id.) His job duties included road testing, diagnosing, and repairing vehicles. (Id.) Mr. Shapiro testified he worked about 40 hours per week and was on his feet all day, walking around the shop. (T.10). He further testified that heavy lifting was also required. (Id.)

Mr. Shapiro testified he was working on January 30, 2024 with restrictions due to an injury to his right wrist. (T.9-10). He was not to push, pull or lift with the right wrist greater than 5 pounds. (T.10). He was also wearing a brace on his right wrist. (Id.) Mr. Shapiro testified he had been out of work due to the injury for a little over a month prior to returning on January 30, 2024. (T.9). He testified he worked about an eight hour shift that day. (T.27).

Mr. Shapiro testified that he spent his time going to physical therapy and sitting around during his month off. (T.11). He testified the physical therapy was specific to his wrist and he did not exercise or go on long walks during the time off. (Id.) He testified that he was off his feet more than usual during his time off. (T.11-12).

Mr. Shapiro testified that his light-duty work on January 30, 2024 required him to drive cars and assist other techs around the shop that needed help diagnosing cars. (T.12). He said he drove maybe 20-25 cars and was getting in and out of the cars awkwardly due to the wrist injury. (Id.) “And to get in and out of some of these Jeeps, I can't use my wrist. I usually would grab a

hold of the wheel and pull myself, and I couldn't do that, so I was jumping in and out of the vehicles to get in and out of the cars." (T.12). Mr. Shapiro testified that he stands 5'6" and relies on his right upper extremity to leverage in and out of the vehicles, especially Jeeps given they sit higher than others. (T.51). "I couldn't use my right arm to pull myself up or ease myself down out of the vehicles." (T.15).

Mr. Shapiro testified "the longer the day went on, the more my back started hurting." (T.13). Mr. Shapiro testified that he did not have regular consistent low back pain prior to January 30, 2024, but that he did experience pain while working on occasion. (T.14). "I think everybody does in this field, you know, you destroy your body from all the lifting and pulling and pushing." (Id.) He noted that he typically felt his muscles from working them, but that day it was different. (Id.)

Mr. Shapiro testified that the only prior treatment he had for back pain was when he was rear ended and suffered whiplash from the motor vehicle accident in June of 2022. (T.40) At the time, he underwent some chiropractic care. (Id.) He continued to work in his full capacity. (Id.)

Mr. Shapiro testified that his left lower back was painful and "throughout the day it would get worse and worse." (Id.) Mr. Shapiro testified that near the end of the day he mentioned to co-worker Dan Sebo, who he talked to regularly, that his back was hurting and that he did not know why. (T.30).

He testified the pain radiated down his left leg, but was not as bad as the next day. (Id). Mr. Shapiro testified that he was sore when he went home after his shift, "but the next day is when I couldn't even straighten up and get out of bed; it was tough." (T.15). Mr. Shapiro testified that he called the service director, Bob Whiteman, on January 31, 2024 to report the injury. (T.16).

Medical Treatment

Mr. Shapiro went to the Emergency Room at Alexian Brothers Hospital on January 31, 2024. (PX1). The history notes non traumatic left lower back pain radiating to the buttock and down leg to foot. (PX1, p.2). “Patient reports yesterday while he was at work he was getting in and out of multiple vehicles while driving them Reports when getting out of vehicle he felt pain. (PX1, p.3). The pain “started at work yesterday and worse today.” (PX1, p.4). Examination noted tenderness to palpation along the L3-4 and left-sided paraspinal musculature into the SI joint. Ambulation with gait discrepancy secondary to back pain. (PX1, p.3). X-rays were negative. (Id). Diagnosis was back pain with a referral for a neurosurgeon and prescriptions of Norco, Flexeril and Medrol Dosepak. (PX1, p.4-5). Mr. Shapiro was restricted from working for two days and then restricted to lifting no more than five pounds until cleared by neurosurgeon. (PX1, p.8).

On February 6, 2024, Mr. Shapiro presented to Dr. Chintan Sampat, of Parkview Orthopaedic Group. (PX2). Dr. Sampat noted a history of an injury at work that occurred on January 30, 2024 when he would “repetitively get in and out of vehicles which caused the onset of significant low back pain that radiates down the left hamstring and posterolateral lower leg into the foot associated numbness and tingling.” (PX2, p.1). He noted only short-term relief from the steroid pack and Norco and reported pain at a level 8/10. (Id.) Examination found pain with range of motion of the lumbar spine, positive straight-leg testing on the left and diminished left lower extremity reflexes. (PX2, p.2). Dr. Sampat diagnosed left lower extremity radiculopathy related to injury at work. (Id.) Dr. Sampat opined, “The mechanism of injury as described as a competent mechanism to result in lumbar radiculopathy." (Id.) Dr. Sampat recommended an MRI, physical therapy and restricted him from working. (Id.)

On February 14, 2024, Mr. Shapiro underwent the MRI of his lumbar spine. (PX7).

On February 16, 2024, Mr. Shapiro presented to Dr. Farooq Khan, of Modern Pain Consultants, upon referral from Dr. Sampat. (PX3). Mr. Shapiro reported that on January 30, 2024, "he was working as an auto mechanic on modified duty due to his right hand injury … This required repetitive door opening, prolonged standing, repetitive climbing in and out of the motor vehicles and consequently resulted in lower back pain with left greater than right lower extremity pain that developed toward the end of the day." (PX3, p.2). He reported his pain at 8/10. (Id). He reported his pain did not improve with rest, medications, stretching, ice and heat. (Id). Physical examination revealed tenderness to palpation at L4-5, L5-S1, limited range of motion due to pain, decreased light touch on left at L3-L4 and positive straight leg raise. (Id.) Dr. Khan reviewed the MRI results and assessed lumbago, mid to lower lumbar myofascial pain with loss of lumbar lordis, lumbar radicular pain, lumbar disc displacement L3-4, L4-5 and lumbar foraminal stenosis L3-4, L4-5. (PX3, p.3). Dr. Khan recommended DME: orthosis use for as many hours a day as needed and OnLux for 15 minutes a day for 90 days. (PX3, p.3-4). Dr. Khan also prescribed Meloxicam, Cyclobenzaprine, and Laxacin, and recommended an epidural steroid injection at L3-4 and L4-5. (PX3, p.5). He also restricted Mr. Shapiro from working. (PX3, p.3).

On February 21, 2024, Dr. Khan performed the recommended epidural steroid injections on the left at L3-4 and L4-5. (PX3, p.10).

On February 23, 2024, Mr. Shapiro returned to Dr. Sampat and reported temporary relief of up to 80% from the epidural steroid injection. (PX2, p.5). Mr. Shapiro also reported temporary relief from the medications and physical therapy. (Id). He further reported having a hard time walking and standing because of the pain. (Id). Examination showed a positive straight-leg raise on the left and diminished left Achillies reflex. (Id.) Dr. Sampat reviewed the MRI and assessed there was a small left-sided disc protrusion at L3-L4 as well as mild lateral recess and

neuroforaminal stenosis at L4-5. (Id.) He diagnosed L3-L5 lumbar disc herniation with left lumbar radiculopathy. (Id.) Dr. Sampat restricted him from working and recommended physical therapy. (Id.)

On March 15, 2024, Mr. Shapiro returned to Dr. Sampat and reported 60% improvement with physical therapy and injection. (PX2, p.8). Straight leg raise was positive on the left. (Id). Dr. Sampat recommended additional physical therapy and consideration of a second epidural steroid injection at the next visit. (Id). He restricted Mr. Shapiro from working. (Id).

On March 20, 2024, Mr. Shapiro again saw Dr. Khan and reported low back pain radiating to his left lower extremity that resulted in pins and needles in his foot. (PX3, p.13). He reported exacerbation of the pain by prolonged sitting, standing and walking. (Id.) He rated his pain at 4/10 with flare ups to 7/10. (Id.) Examination revealed positive straight leg raise on the left, limited range of motion due to pain and slight decreased sensation at L5 to light touch. (PX3, p.14). Dr. Khan recommended a second epidural steroid injection. (PX3, p.16).

On April 3, 2024, Mr. Shapiro underwent the second epidural steroid injection on the left at L3-4 and L4-5. (PX3, p.23).

On April 12, 2024, Mr. Shapiro again saw Dr. Sampat and reported 60% improvement in his symptoms and still noted some paresthesias in the left anterior lateral thigh down to the knee. (PX2, p.11). Straight leg raise was positive on the left. (Id.) Dr. Sampat recommended he return to work light duty starting April 15, 2024 with no lifting, pushing or pulling more than 20 lbs. (Id.) He recommended continued physical therapy. (Id.) Dr. Sampat recommended a potential third injection if there was future flare up. (Id.)

On May 17, 2024, Mr. Shapiro returned to Dr. Khan for a follow-up and reported minimal pain radiating to the left lower extremity and improvement with the pins and needles sensation.

(PX3, p.24). Examination showed improvement in symptoms with a negative straight leg exam and normal sensory examination. (PX3, p.25). Dr. Khan released Mr. Shapiro from care and advised to follow up as needed for severe pain exacerbations. (PX3, p.26).

On May 24, 2024, Mr. Shapiro returned to Dr. Sampat for a final visit. (PX2, p.15). Mr. Shapiro reported wanting to try to return to work. (Id.) Dr. Sampat released him to a trial of full-duty work and opined that he was at maximum medical improvement. (Id.)

Mr. Shapiro testified that he did return to full-duty work and continued to work full-duty until his retirement. (T.24). He further testified that he has not returned for any additional medical treatment. (Id.) Mr. Shapiro stated that sometimes he will have radiating pain down his left leg and is "probably going to go back and go back to the pain management to see about that third epidural shot that might help." (T.25). He stated that he tries to do stretches that he learned in physical therapy and takes his prescribed medications as needed to alleviate his symptoms. (Id.) Mr. Shapiro testified that he has flare ups approximately every two weeks. (T.26).

Testimony of Dan Sebo

Petitioner's witness Dan Sebo, 57, testified that he was employed as a mechanic for Respondent for about seven years. (T.58). He testified that he was working on January 30, 2024 and was Mr. Shapiro's friend and co-worker. (T.60). He testified he recalled talking to Mr. Shapiro that date and noticed that "he was kind of walking like in pain." (Id.) Mr. Sebo testified that Mr. Shapiro said "he hurt his back, his back was hurting him a lot, and I was working on a car, so he came up to me and said that." (Id). Mr. Sebo testified that he was not at what time the conversation had occurred but he thought it was in the afternoon. (T.61). Mr. Sebo testified that he had seen Mr. Shapiro earlier in the day and had not mentioned anything about back pain and then saw him again and mentioned his back was hurting. (T.67).

Testimony of Robert Whiteman

Respondent's witness, Bob Whiteman, testified that he works as the Parts and Service Director for Respondent, who he has worked for since 1994. (T.69). He testified that in his role he ran the day-to-day operations of the service department and managed the employees, including Mr. Shapiro. (T.70). He stated that Mr. Shapiro was working light-duty, which includes road testing cars and working with other technicians to help diagnose a car, on January 30, 2024. (T.71) Mr. Whiteman testified that the procedure for reporting an injury is to give the date, time and car they were working on at the time of the injury and report it ideally the same day. (T.73).

Mr. Whiteman testified that he received a phone call from Mr. Shapiro at approximately 8:30am on January 31, 2024. (T.93). He stated that Mr. Shapiro "told me that he was having some back trouble and that he was having a hard time getting out of bed." (T.74-75). He further testified that he received another phone call from Mr. Shapiro around 4 p.m. that afternoon during which Mr. Shapiro said he had gone to the doctor and that he was reporting that he hurt himself at work. (T.77).

Mr. Whiteman testified that he was at O'Hare airport during the first phone call and in Las Vegas during the second call. (T.93-94). He testified that he filled out an incident report, documenting the calls on February 6, 2024. (T.94; RX3). Mr. Whiteman noted in the incident report that Mr. Shapiro "could not say how or where he injured himself." (RX3).

Mr. Whiteman further testified that he watched the surveillance videos from January 30, 2024 and chose which portions of the videos to the workers' compensation carrier. (T.97).

Testimony of Dragana Petric

Respondent's witness Dragana Petric testified she performed surveillance for PhotoFax during February and March of 2024 as a private investigator. (T.100). She testified that she used a

camera and phone to perform surveillance on Mr. Shapiro on February 23, March 9 and March 15, 2024. (T.101-102). She testified she watched him for eight to eight-and-a-half hours on three separate days. (T.107). She further testified she only made videos when she had a visual on Mr. Shapiro. (T.108).

Testimony of Bret Johnson

Respondent's witness Bret Johnson testified he performed surveillance for PhotoFax on March 8, 2024 on Mr. Shapiro. (T.110). He testified he took a video of him carrying a blanket, walking out of a physical therapy office and bending over into his vehicle at 4:01 pm that day. (T.114-116).

Testimony of Zachary Ryan Sutinen

Respondent's witness Zachary Ryan Sutinen testified he works as an investigator for insurance claims for PhotoFax. (T.118). He testified that he performed surveillance of Mr. Shapiro on February 28 and February 29, 2024. (T. 119).

Surveillance

Review of the surveillance shows Mr. Shapiro visibly wearing a brace on his right wrist while working on January 30, 2024. The following are noted instances of Mr. Shapiro getting in and out of vehicles:

- RX2b: Mr. Shapiro is seen getting into a blue Jeep at 4:44.
- RX2d: The video starts at 11:07 and ends at 12:25. The following is observed:
    - 11:36 – Mr. Shapiro gets in a silver Jeep and is seen leaning in and crouching down on the back passenger side. He gets out at 11:37.
    - 11:37 – Mr. Shapiro gets in, leans in crouched down, at the front passenger side of a silver Jeep. He gets out at 11:41.
    - 11:52 – Mr. Shapiro gets in a silver Jeep on the back passenger side. He gets out at 11:53.

- 11:53 – Mr. Shapiro gets in silver Jeep on front passenger side. He gets out and gets back in on the back passenger side. He gets out at 11:56.
- 11:57 – Mr. Shapiro gets back in Silver Jeep on passenger side. He gets out at 12:00 and is holding the left side of his low back with his left hand.
- 12:01 – Mr. Shapiro gets in black Jeep on the driver's side. He gets out at 12:19.
- 12:22 – Mr. Shapiro gets in silver Jeep on the driver's side. He gets out at 12:23.

- RX2e: The video starts at 12:25 and ends at 14:01. The following is observed:
  - 12:43 – Mr. Shapiro gets in silver Jeep on the driver's side. He gets out at 12:52.
  - 12:53 – Mr. Shapiro gets in silver Jeep on the passenger side. He gets out at 13:12.
  - 13:24-25 – Mr. Shapiro is seen holding the left side of his lower back with his left hand while walking.
- RX2f and RX2g: The videos are overlapping time frames which show Mr. Shapiro got in and out of the driver's side of a blue Jeep twice.

During the trial, Respondent showed video surveillance of Mr. Shapiro walking and carrying two boxes from his car into a Kohl's store on January 23, 2024 again walking out of a Kohl's store on February 23, 2024. (RX.5) Mr. Shapiro testified the boxes contained shoes and weighed maybe two pounds. (T.53).

Section 12 Examination - Dr. Carl Graf

Dr. Carl Graf, of Illinois Spine Institute, examined Mr. Shapiro at the request of Respondent on May 3, 2024. (RX1). Dr. Graf noted that Mr. Shapiro reported that he was off work for a prior injury and when he returned to light duty on January 30, 2024, he was test-driving vehicles. (RX1). Mr. Shapiro reported an injury on January 30, 2024. (Id). "He notes that he was driving Jeeps which were high and he notes that he would typically pull himself up with his right wrist" … "since his wrist was injured he notes that he had to 'jump in and jump out.' He notes that he started to have left sided low back pain later that day. The next morning he had low back pain and left leg pain and went to the ER." (Id). He further noted that Mr. Shapiro denied any prior related injury, care or treatment. (Id).

Dr. Graf reported that there were no hard neurologic findings upon physical examination. (RX1). He further opined that Mr. Shapiro's diagnosis was a lumbar strain that had since resolved and that he was at maximum medical improvement. (Id). Dr. Graf opined that his care and treatment had been reasonable and medically necessary and that no further treatment would be reasonable or necessary as it pertained to the claimed injury. (Id). Dr. Graf provided an AMA impairment rating of 1%. (Id).

Dr. Graf stated that he questioned causation as a whole because "getting in and out of cars" would not be considered a traumatic event and the four hours of video surveillance he viewed "failed to demonstrate any traumatic incident."

CONCLUSIONS OF LAW

IN RELATION TO (C) WHETHER AN ACCIDENT OCCURRED THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT WITH RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner alleges that on January 30, 2024, he sustained a compensable work injury that was a result of the repetitive nature of his work that day. He had just returned from a month of being off work due to an injury to his right wrist and was on light duty, wearing a brace on his right wrist and restricted to just lifting five pounds. Tasked with test driving and helping technicians diagnose problems, a majority of his day was spent getting in and out of vehicles with the restricted use of his right hand and wrist.

Petitioner testified that he was getting in and out of 25 vehicles throughout his shift. Petitioner claims the awkward nature of not having the leverage of his right hand to get in and out of the vehicles is what triggered his back pain that progressively got worse throughout his shift. The following morning, it had gotten worse to the point that he had trouble getting out of bed, so

he gave notice of the injury to Respondent's Service & Parts Director Bob Whiteman and went to the emergency room.

Petitioner underwent conservative treatment with a neurosurgeon, pain management and physical therapy. He underwent several months of physical therapy, work restrictions and two epidural steroid injections, saw improvement in his symptoms and was back to work within 4 months. He returned to his role as an auto mechanic, of which he had a 40-year career. Petitioner testified it was not unusual to have standard muscle aches and pains from the nature of the job, but this time it was different. He sought treatment, followed through with it and got back to work full duty for Respondent until his retirement on November 15, 2025.

The Arbitrator recognizes that this case hinges on credibility. There are no disputes regarding the reasonableness and necessity of Petitioner's medical treatment, as Respondent's Section 12 examiner, Dr. Graf, agreed. In assessing the Petitioner's credibility, the Arbitrator observed his demeanor throughout the hearing, listened to his testimony, reviewed the medical records and surveillance videos. The Arbitrator finds that Petitioner was credible. Petitioner's demeanor at trial was direct and forthcoming. He answered the questions with sincerity.

The records corroborated Petitioner's testimony with consistent histories of the injury and complaints of his symptoms. Any inconsistencies were minor and unpersuasive to diminish his credibility. His testimony was consistent with his supervisor Bob Whiteman's about reporting the injury, as well as his coworker Dan Sebo about him mentioning the pain he was having that day. The surveillance submitted by Respondent from the date of the alleged injury also corroborates Petitioner's claim that he was getting in and vehicles 25 times as the videos alone show 26 instances of him getting in and out of Jeeps. Throughout the day he is also observed holding the left side of his lower back with his left hand.

Illinois courts have long held that an employee can be accidentally injured under the Workers' Compensation Act as the result of repetitive, work-related trauma absent a final, identifiable injury. Peoria County Belwood Nursing Home v. Industrial Com'n of Ill., 115 Ill.2d 524 (1987); see also Durand v. Industrial Com'n, 224 Ill.2d 53 (2006).

The Respondent tried to draw the inference that Petitioner previously had this injury and there could have been another cause for the back pain, such as taking care of his fiancée after a stroke and/or a motor vehicle accident where he was rear ended a few years prior. Even if this is the case, Petitioner's work of getting in and out of vehicles with the restricted use of his right hand and arm, exacerbated the severity of his condition.

Under Illinois law, the fact that a work-related accident may have accelerated or aggravated a pre-existing condition does not mean the employee cannot recover benefits, as long as the work-related accident was a factor in contributing to the disability. Kishwaukee Community Hospital v. Industrial Commission, 356 Ill.App.3d 915, 922 (2nd Dist. 2005) (citing Gust K. Newberg Construction v. Industrial Comm'n, 230 Ill.App.3d 96, 111 (1992)). So long as some act or phase of employment was a causative factor, which does not have to be the sole or only principal cause, of the injury, he is entitled to benefits. Concrete Structures of the Midwest v. Industrial Com'n, 315 Ill.App.3d 596, 598 (1st Dist. 2000).

Additionally, the fact pattern and chain of events supports a finding of compensability. The Illinois Supreme Court has held that "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." Int'l Harvester v. Indus. Comm'n, 93 Ill. 2d 59, 63-64 (1982)(citing Martin Young Enterprises, Inc.

v. Industrial Com., 51 Ill.2d 149, 155 (1972)). The same principle should be applied to cases of repetitive trauma injuries. See Cook v. Industrial Comm'n, 176 Ill.App.3d 545 (3rd Dist. 1988).

In this case, the Petitioner had been working full duty without issue until his right wrist injury for which he was on restrictions for about a month before returning to work light-duty. Petitioner testified he did not do much besides attend physical therapy for the wrist and sit around during his time off. He did not exercise or go on long walks. He returned to work on the date of injury and worked nearly an eight-hour day, getting in and out of vehicles at least 26 times, and had low back pain on the left side that progressed throughout the day. He did not think much of it at the time, as back pain was part of the nature of the job. The next morning, however, he could hardly get out of bed. Then he reported the injury to Respondent and sought medical treatment.

Thus, Petitioner is entitled to benefits under the Act as he has established that the lumbar disc protrusions with radiculopathy were the result of his job duties on January 30, 2024. Accordingly, the Arbitrator finds that Petitioner suffered a compensable injury that arose out of and in the course of his employment with Respondent.

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

There is no dispute among any of the medical providers or Section 12 examiner that Petitioner suffered an injury to his low back. There is no dispute that the treatment Petitioner underwent was reasonable and necessary to relieve his symptoms. The only dispute is causation.

Petitioner's treating neurosurgeon, Dr. Sampat, opined that the reported repetitive getting in and out of vehicles was a competent mechanism of injury. Dr. Graf was not so sure, noting that there was no traumatic incident that caused the injury. However, Petitioner is not alleging a traumatic injury, but rather a repetitive one. The medical records contain consistent histories of Petitioner attributing the injury to getting in and out of vehicles. The Arbitrator finds Petitioner's

testimony regarding how the injury occurred credible and Dr. Sampat's opinions regarding the mechanism of injury persuasive.

Having found above that the Petitioner suffered an injury that arose out of and in the course of his employment with Respondent on January 30, 2024, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to that work injury.

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

The Arbitrator incorporates and adopts the findings contained within Section (F) of this decision. The Arbitrator determines the bills submitted into evidence as Petitioner's Exhibit 6, were reasonable and necessary to cure or relieve the Petitioner of the effects of his injury. The medical records, which reflect improvement in Petitioner's symptoms with the treatment, as well as Petitioner's testimony that the treatment helped relieve him of his symptoms support this finding.

Therefore, the Arbitrator awards these bills, which were admitted into evidence as Petitioner's Exhibit 6, pursuant to the Illinois Workers' Compensation Commission fee schedule under section 8.2 of the Act. Accordingly, Petitioner is awarded and Respondent is directed to pay $101,791.40, representing the outstanding balances of the following providers: Parkview Orthopedics, $1,828.00; Premier Physical Therapy, $19,665.00; Ascension Alexian Brothers, $2,542.00; American Surgical Associates, $34,400.00; Modern Pain Consultants, $36,756.40; Medical Legal Solutions Corp., $3,000.00; Premier Healthcare Services, $3,600.00.

IN RELATION TO (K) WHETHER PETITIONER WAS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified and the records reflect he was restricted from working from January 31, 2024 through May 1, 2024, when he returned to work light duty. Having found a compensable accident did occur and Petitioner's condition of ill-being is related to said injury, the Arbitrator finds that Petitioner was off work and entitled to temporary total disability benefits during this period. Accordingly, the Arbitrator awards and directs Respondent to pay 13 weeks of temporary total disability benefits at a rate of $1,224.17 per week as provided in Section 8(b) of the Act.

IN RELATION (L) TO WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator looks to Section 8.1b of the Act for guidance in assessing permanency and weighs the five factors enumerated within to determine the nature and extent of the injury as follows:

With regard to subsection (i) of §8.1b(b), the Arbitrator notes Dr. Graf provided an AMA impairment rating of 1%. AMA impairment ratings do not necessarily equate to permanent partial disability values under the Illinois Workers' Compensation Act, and are just a factor to be weighed in determining disability value. Therefore, the Arbitrator gives *some* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a journeyman auto mechanic at the time of the injury and *was* able to return to work in his prior capacity. The Arbitrator notes Petitioner continued to have some pain and flare ups every few weeks. However, he was able to continue working in his full capacity until retirement. Because of the continued heavy nature of Petitioner's work and persistent symptoms, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident and Petitioner has since retired as of November 15, 2025. The Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner was able to return to his prior employment with Respondent. Because there is no evidence of decreased future earning capacity, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that all treating physicians and the Section 12 examiner found his diagnosis and treatment reasonable and necessary to cure or relieve Petitioner from his symptoms. Petitioner testified that he continued to have some pain and flare ups that he relieves with home exercises and prescribed medications. He further testified that he may get a third epidural steroid injection in the future to alleviate his symptoms. Both Dr. Sampat and Dr. Khan had noted a third injection may be necessary in the future. This is consistent with Petitioner's testimony. Because of the MRI, epidural steroid injection reports and treatment notes, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the body, or 25 weeks, as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005223
Case Name	Jeffrey L. Perry v. Illinois Switchboard
Consolidated Cases	24WC002652
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0298
Number of Pages of Decision	32
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel Egan

DATE FILED: 10/26/2026

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFREY L. PERRY,

Petitioner,

vs. NO: 23 WC 5223

ILLINOIS SWITCHBOARD,

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 March 27, 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 Respondent pay to Petitioner interest under §19(n) of the Illinois Workers' Compensation Act, if any.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 26 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/30/26
FJS/mek
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005223
Case Name	Jeffrey L. Perry v. Illinois Switchboard
Consolidated Cases	24WC002652
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel Egan

DATE FILED: 3/27/2026

/s/ Paul Seal, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 24 2026 3.63%

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jeffrey L. Perry
Employee/Petitioner

v.

Illinois Switchboard
Employer/Respondent

Case # **23WC005223**

Consolidated cases: **24WC002652**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 29, 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 present 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, **2/6/2023**, 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 $**60,214.96**; the average weekly wage was **$1,157.98** .

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

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

Respondent shall be given a credit of $**13,454.67** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**13,454.67**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$771.99**/week for **25-6/7** weeks, for the periods of **2/18/2023-6/19/2023 and 6/26/2023-8/23/2023**, which is the period of temporary total disability for which compensation is due.
- Respondent shall authorize and provide payment for the medical treatment, including the left carpal tunnel surgery, recommended by Petitioner's treating physicians, Dr. Fernandez. The authorization shall be in writing and forwarded to Petitioner's attorney.
- The issue of medical bills was deferred, but not waived.
- See Rider attached hereto and made a part of hereof.

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

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

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



_____
Signature of Arbitrator

March 26, 2026
Date

MARCH 27 2026

Jeffrey L. Perry v. Illinois Switchboard
Case Number: 23WC005223 (consolidated with 24WC002652)
D/A: 2/6/2023

RIDER TO ARBITRATION DECISION

I. Introduction

Evidence in the above-captioned claim was present to Arbitrator Seal on August 29, 2025. On that date, the Arbitrator heard the testimony of Petitioner. The Arbitrator also received into evidence various exhibits, which included: 1) medical records; 2) diagnostic study reports; 3) operative report; 4) physical therapy records; 5) narrative report of Dr. Fernandez; 6) deposition transcripts of Dr. Fernandez and Dr. Vender; 6) photographs of Petitioner's work site; 6) videos of Petitioner painting; 7) recorded statement of Petitioner; 8) cover letter sent to Dr. Vender prepared by the adjuster; and 9) wage documentation.

The Arbitrator is considering the disputed issues of medical causation, prospective medical care and temporary total disability benefits. The parties deferred the issues of payment of medical bills. The issue is not waived and can be presented by the parties at a later date. The instance case is consolidated with case number 24WC002652. A separate decision will be issued in connection with case number 24WC002652.

Before making conclusions of law in connection with this case, the Arbitrator makes the following findings of fact:

II. Findings of Fact

Petitioner testified before the Arbitrator on August 29, 2025. The Arbitrator finds that Petitioner's testimony was credible and unrebutted. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

Respondent presented Kerry Huckstep, the adjuster, as a witness. The Arbitrator found him credible as to the foundation of the recorded statement and letters to Dr. Vender.

A. Work History

Petitioner testified that he was employed by Respondent on February 6, 2023 as a painter. He had been employed by Respondent for 35 years since September 5, 1989. He became a painter for Respondent in 2006. Prior to that he was employed as a driver and assembler. Petitioner help with painting before he officially became a painter. Petitioner was a member of IBEW Local 134. He is right hand dominant, 6'2" tall and weighed 232 pounds. Petitioner has calluses on both hands. Petitioner used to smoke. He smoked 2 packs per week. He quit smoking in August 2024.

Petitioner described his job duties as a painter for Respondent. Petitioner received all the cabinets and covers and prepped and painted them. Petitioner worked 8 hours per day. Petitioner had a 20 minute break and a 30 minute lunch break. Petitioner worked 8.5 hours per day with the breaks.

Petitioner lifted, flipped, hung and moved metal parts, loose metal covers and parts for electrical switch gears. He constantly moved, lifted, turned and wiped parts. Petitioner lifted up to 60 pounds. He lifted paint buckets that weighed 60 pounds. He also lifted large, 94 inch frames of electrical equipment, and cabinets. The cabinets weighed 300 pounds. Petitioner did not lift the cabinet. Rather, he laid the cabinets on their side on a dolly. Petitioner constantly reached to paint. He performed constant grasping. He grasped and squeezed the paint gun, hose, covers and boxes to lift and move them. Petitioner testified that he cleaned 50% of the time and painted 50% of the time. However, the timing varied day by day. On some days, he did more painting than others. Petitioner set up his paint area. It took Petitioner 5 minutes to set up the paint area.

Petitioner described how he cleans. Petitioner testified that parts were delivered to his area. He wiped them down and flipped them over. The parts were all different sizes and weights. The parts weighed between to 3 pounds and a couple of hundred pounds. Petitioner wore rubber gloves and used paint thinner on rags. He folded the rags into quarters and soaked them in paint thinner. Petitioner used the rags to clean the cracks, crevices and corners at all different angles. Petitioner's hands twisted in all directions. He placed pressure on his hands while he cleaned.

Petitioner described how he used the spray painter. He testified that using the spray painter was a two handed job and the gun cannot be lifted with one hand. The paint gun had two thick hoses that were wired together that Petitioner held in his opposite hand about three feet from the end of the gun. The hose controlled the painting. Petitioner held the gun in one hand and the hose in the other at all times. The gun could not be held in the air with one hand. Petitioner did not think of what his other hand was doing at all times when he gave the recorded statement, but the paint cannot be controlled without holding the hose. Petitioner testified that his left hand held the hose for the entire time that he sprayed. Petitioner's right hand sprayed and the left hand held the hose and maneuvering it with small twists of the wrist. If Petitioner held the gun with his left hand, then the right hand held the hose and he twisted the hose as he painted because the hose was stiff. If he did not twist the hose, then he had to fight with the gun to move the hose.

Petitioner testified that up until about three years ago, he primarily used his right hand to use the paint gun. Approximately three years ago, Petitioner began experiencing tingling in his hands that became worse. Petitioner testified that his right hand was so tingly and numb that he had to use the gun with his left hand. Petitioner testified that during his time as a painter, he would use his left hand to paint when he could not reach spots. Petitioner used both hands to paint and clean. Petitioner squeezed the gun trigger with his two middle fingers. Petitioner has calluses on both hands.

Pictures of Petitioner's job were admitted into evidence. (PX 13). Picture 1 depicted the covers and large side plates. (PX 13 at 1). Picture 2 depicted frames for equipment and the cover system. (PX 13 at 2). Picture 3 depicted Petitioner's painting area and the area where he assembled the equipment. (PX 13 at 3). Picture 4 depicted more covers as were delivered to Petitioner. (PX 13 at 4). The covers came on a skid and Petitioner washed them 2 to 3 times. (PX 12 at 4). Picture 5 depicted the covers, pieces and parts for the inside of the cabinet. (PX 13 at 5). Picture 6 depicted the bottom of a large outdoor section. (PX 13 at 6). It contained black rudder and weighed 350 pounds. (PX 13 at 6). Petitioner testified that all the parts have to be painted and flipped. (PX 13 at 7). The parts could weigh 250 pounds and had to be painted and primed. (PX 13 at 7). Petitioner had to flip them over at least 6 times to wash, prime and paint them. (PX 13 at 7). Picture 7 depicted another picture of the boxes that have to be painted. (PX 13 at 7). Pictures

8 depicted the corner section. (PX 13 at 8). Petitioner had to lift the box up onto a forklift, reach inside and wash and clean the section. (PX 13 at 8). The box was full of grinding dust from the welder and the inside of the box had piles of grimy dust and oil that had to be cleaned out. (PX 13 at 8). Petitioner had to use a stick with a rag attached to clean inside. (PX 13 at 8). Painting the box was difficulty. (PX 13 at 8). Picture 9 depicted the same box in the position that Petitioner prepared and washed it in. (PX 13 at 9). The box only had one opening that he can clean through. (PX 13 at 9). Pictures 10 and 11 depicted the spray gun and attached hose. (PX 13 at 10-11). Pictures 12 through 14 depicted the cabinets and frames that have to be cleaned and painted. (PX 13 at 12-14). The cabinets came to Petitioner freshly welded, greasy and dirty with grime and dust and had to be cleaned. (PX 13 at 12-14). Picture 16 depicted the pieces and supports. (PX 13 at 16). Some of the pieces were 300 pounds. (PX 13 at 16). The pieces were hung up to paint them. (PX 13 at 16). They were 10-gauge steel and very heavy. (PX 13 at 16). Petitioner had to hang the pieces to paint them. (PX 13 at 16). Pictures 17 and 18 depicted the front covers and parts. (PX 13 at 17-18). Picture 19 depicted the paint bucket attached to the spray gun. (PX 13 at 19). Picture 20 depicted the 5 gallon pain bucket that Petitioner had to lift. (PX 13 at 20).

Petitioner took two videos of himself painting. (PX 14). The videos were admitted into evidence. (PX 14). The videos showed Petitioner painting with his left hand holding the spray painter and his right hand holding the hose. (PX 14). He had to constantly move the hose out of the way and snap it to move it. (PX 14). The hand holding the hose grasped it the entire time he was painting. (PX 14).

Petitioner gave a recorded statement to Kerry Huckstep, the adjuster, on February 16, 2023 in connection with the work-related accident of February 6, 2023. (RX2); (RX 3). Both the audio of the recorded statement (RX 2) and the transcript of the statement (RX 3) were admitted into evidence. Petitioner stated that he had been employed by Respondent for 32 years and that Respondent built electrical equipment such as switchgear. (RX 3). Mr. Huckstep asked him to elaborate on his job as a painter "what you use in tools and equipment and all that good stuff." (RX 3 at 4). Petitioner answered that he cleans the equipment that the shop builds many times and paints it. (RX 3 at 4). He was the only painter. (RX 3 at 4). He confirmed that he cleaned and painted larger cabinets, covers and doors. (RX 3 at 4). Petitioner used a

spray gun connected to a 5 gallon paint container with two hoses hooked up to the spray gun and squeezed the trigger. (RX 3 at 5). He confirmed that the hose was about 12 pounds and 12 to 15 feet long that he had to maneuver around. (RX 3 at 5). He squeezed the trigger of the paint gun halfway to get the air out and then all the way to get the paint out. (RX 3 at 6). He held the trigger down until the paint was finished. (RX 3 at 6). Petitioner stated that everything was cleaned with rags and paint thinners, he soaked the rags and washed the box or covers of all the grease, oil and grinding dust. (RX 3 at 6). He confirmed that there were crevices, cracks and corners to clean. (RX 3 at 7). He spent half his day cleaning and half painting. (RX 3 at 7). Petitioner stated that for years he only used his right hand to paint, but for the last couple of years, he tried to use his left hand. (RX 3 at 7). He stated that he could never get a proper finish with his left hand, but did everything he could on the inside of the box and backs of covers with his left hand because of the pain in his right hand. (RX 3 at 7). He confirmed that he has been using his left hand more lately. (RX 3 at 7). Petitioner summarized his medical care in the recorded statement. (RX 3).

Petitioner recalled giving the recorded statement to Mr. Huckstep. Petitioner answered the questions asked to him by Mr. Huckstep to the best of his ability. He tried to be complete with his answers. He testified that he struggles to describe his job duties and found it difficult to describe his job duties to Mr. Huckstep. Petitioner did not provide all the details of his job to Mr. Huckstep. Mr. Huckstep did not ask for pictures of Petitioner's job. Petitioner testified that he primarily used his right hand to paint; however, he did use his left hand at times. He always had to grasp the hose with the other hand. He thought he told Mr. Huckstep that he had to grasp the hose.

The wage statement for the February 6, 2023 work-related accident was admitted into evidence. (RX 8). The wage statement confirms that Petitioner received vacation pay for the period of February 7, 2023 through February 17, 2023. (RX 8).

B. Testimony of Kerry Huckstep

Kerry Huckstep testified on behalf of Respondent to authenticate the recorded statement and letters to Dr. Vender. Mr. Huckstep was an adjuster for West Bend. He worked for West Bend for 37 years. He had

been a manager for 3.5 years prior to being a claims representation from 2004 through 2007. He received on the job training. Mr. Huckstep took statements as part of his job duties.

Mr. Huckstep took the recorded statement of Petitioner. The statement was 15 minutes in length. He authenticated the transcript. He also authored the letters to Dr. Vender for the Section 12 reports based on the recorded statement.

Mr. Huckstep was only familiar with Petitioner's job duties as a painter through Petitioner's statement. Petitioner only answered the questions that he was asked by Mr. Huckstep.

C. Prior Medical Treatment

Petitioner underwent a right hip replacement in June 2022. He returned to work in October 2022. The first week he returned, he worked 24 hours. Petitioner used a walker after the hip replacement surgery.

Petitioner testified regarding his prior medical treatment for his bilateral hands. Petitioner began experiencing symptoms, including numbness and tingling in his hands, approximately three years prior to February 6, 2023. He testified that he experience symptoms from carpal tunnel syndrome around 2021. He experienced symptoms in his right hand first, then his left. Petitioner had not sustained any accidents or injuries involving his hands prior to February 6, 2023. Prior to February 6, 2023, Petitioner had never lost time from work due to the condition of his hands. He did not know about carpal tunnel syndrome until he was diagnosed by Dr. Bednard. He thought carpal tunnel syndrome was only for people who type a lot.

Petitioner was examined by his primary care doctor, Dr. Bednard on October 11, 2022. (PX 1); (RX 9). Petitioner complained of right hand numbness and tingling. (PX 1). Dr. Bednard recommended that the right hand condition be monitored. (PX 1).

Petitioner was examined by Dr. Bednard on November 29, 2022. (PX 1). Petitioner complained of bilateral numbness and tingling in is hands. (PX 1). The numbness and tingling was worse when he started working as a painter again. (PX 1). Dr. Bednard recommended an EMG. (PX 1).

The EMG was completed on January 23, 2023 at Northwestern. (PX 2). The EMG revealed severe right and moderate left median neuropathy of the wrists, or carpal tunnel syndrome, and evidence of chronic, but not active, radiculopathies of the L4, L5 and C8 nerve roots. (PX 2).

D. Work-Related Accident of February 6, 2023

On February 6, 2023, Petitioner as performing his job duties for Respondent. Petitioner was painting. He sought medical treatment with Dr. Bednard on February 6, 2023. Dr. Bednard advised Petitioner to remain off work. This was the first time that Petitioner was advise to remain off work due to his hand condition.

E. Medical Treatment Following the Accident of February 6, 2023

Petitioner was examined by Dr. Bednard on February 6, 2023. (PX 1). Dr. Bednard set forth an assessment of bilateral carpal tunnel syndrome. (PX 1). He noted that Petitioner worked as a painter and the carpal tunnel was made worse by the work. (PX 1). Dr. Bednard stated that carpal tunnel was confirmed by the EMG and the right hand was worse than the left hand. (PX 1). He referred Petitioner to a hand surgeon and recommended that he remain off work. (PX 1).

Petitioner was examined by Dr. Kadow on February 8, 2023. (PX 1). Petitioner presented with a two to three year history of progressive numbness and tingling in his bilateral hands. (PX 1). Dr. Kadow noted that Petitioner worked as a painter for decades and felt that the carpal tunnel was related to work. (PX 1). Dr. Kadow set forth an assessment of bilateral carpal tunnel syndrome. (PX 1). She recommended surgical intervention especially on the right side. (PX 1). She recommended that Petitioner return to work. (PX 1); (RX 1).

Petitioner called Dr. Kadow's office on February 16, 2023 to clarify his work restrictions since Dr. Bednard recommended that he remain off work and Dr. Kadow released him to return to work. (PX 1). On February 20, 2023, Dr. Kadow authored a work status note stating that Petitioner could return to work with the restrictions of light use of the bilateral hands, no lifting, pushing, pulling over 1 to 2 pounds, no repetitive gripping or force through both hands and sedentary or desk work. (PX 1). Respondent was not able to accommodate the restrictions. On February 20, 2023, Dr. Bednard stated that painting made Petitioner's condition worse. (PX 1).

Petitioner elected to undergo medical treatment with Dr. Fernandez. (PX 3). Petitioner's wife found Dr. Fernandez. Petitioner was initially examined by Dr. Fernandez on March 30, 2023. (PX 3). Petitioner

presented with bilateral hand complaints of numbness and tingling from his work activities as a commercial painter. (PX 3). Petitioner's attributed the onset and worsening of his condition to the activities using a paint sprayer and gripping. (PX 3). His symptoms were worse with closing or gripping with his hands. (PX 3). Dr. Fernandez recommended that Petitioner undergo surgery for his bilateral hands, right first. (PX 3). He recommended that Petitioner remain off work. (PX 3). Dr. Fernandez stated that Petitioner's bilateral carpal tunnel syndrome was causally related to his work activities as a commercial painter due to the repeated and forceful gripping and grasping over time. (PX 3).

Petitioner underwent the right carpal tunnel release on April 17, 2023 with Dr. Fernandez. (PX 4). The surgery was performed at Gold Coast Surgical Center. (PX 4).

Petitioner remained under the post-operative care of Dr. Fernandez. (PX 3). Post-operative care included follow up appointments, occupational therapy and activity modification. (PX 3). Petitioner underwent occupational therapy at Athletico. (PX 5).

On June 1, 2023, Dr. Fernandez examined Petitioner. (PX 3). Petitioner was improving on the right side; however, he continued to experience left sided symptoms, including numbness and tingling. (PX 3). Dr. Fernandez recommended that Petitioner remain off work, continue to participate in occupational therapy and undergo surgery for the left side. (PX 3). Petitioner continued to participate in occupational therapy at Athletico. (PX 5).

Petitioner was evaluated by Dr. Fernandez on July 13, 2023. (PX 3). Petitioner continued to experience worsening left sided symptoms. (PX 3). Dr. Fernandez recommended that Petitioner remain off work and undergo left sided carpal tunnel surgery. (PX 3). Petitioner continued to participate in occupational therapy. (PX 3).

Petitioner was examined by Dr. Fernandez on August 23, 2023. (PX 3). Petitioner continued to experience pain and symptoms in his left hand. (PX 3). Dr. Fernandez recommended a left carpal tunnel release. (PX 3). He noted that since Petitioner was not receiving benefits, he was under a significant hardship. (PX 3). Thus, he released Petitioner to return to work without restrictions. (PX 3). Petitioner was discharged from occupational therapy on October 9, 2023. (PX 5).

Petitioner was examined by Dr. Fernandez on October 11, 2023. (PX 3). Dr. Fernandez documented that Petitioner had significant complaints of numbness and tingling in his left hand. (PX 3). Petitioner's right hand was doing better. (PX 3). Petitioner returned to work since he was not being paid and experienced significant pain and weakness while working. (PX 3). Dr. Fernandez recommended a left carpal tunnel release. (PX 3). He set forth that since Petitioner had been a commercial painter for 33 years, the carpal tunnel was work related. (PX 3). Dr. Fernandez set forth an assessment of bilateral hand numbness and tingling with onset due to work activities as a commercial painter, postoperative right wrist carpal tunnel syndrome left wrist carpal tunnel syndrome, right wrist carpal tunnel release on April 17, 2023 and EMG with evidence of carpal tunnel syndrome. (PX 3). Petitioner scheduled a follow up appointment for January 24, 2024.

F. Post-Accident Employment

Petitioner returned to work for Respondent on August 23, 2023. Petitioner returned to work due to financial reasons because he was not being paid temporary total disability benefits. Petitioner had some scar tissue in his right hand and tingling and numbness in his left hand. Between February 6, 2023 and December 11, 2023, Petitioner did not sustain any new accidents or injuries involving his hands.

G. Work-Related Accident of December 11, 2023

Petitioner was performing his job duties for Respondent on December 11, 2023. Petitioner was mixing paint. He recalls the day because he mixes paint on Mondays. Petitioner lifted the paint onto a table with both hands. He had both hands on the bucket and he lifted it onto the table to prepare the paint. The table was approximately 30 to 32 inches high. When Petitioner lifted the bucket, he felt a pop in his right wrist. The paint bucket weighed 50 to 60 pounds. It was a 5 gallon enamel paint bucket depicted in Petitioner's Exhibit 14, photo 20. Petitioner felt a sharp pop and pain in his wrist that was different than before the accident. Petitioner lifted the paint can every 3 to 4 weeks over the course of his job.

Petitioner had an appointment scheduled with Dr. Fernandez for January 24, 2024. Petitioner testified that he waited to see Dr. Fernandez until January 24, 2024 because the pain in his wrist made him think of his carpal tunnel syndrome. The area of his injury was close to the carpal tunnel surgery. Petitioner did

not want to say that he hurt himself again if the pain was related to the carpal tunnel syndrome. He decided to wait and see what Dr. Fernandez said about the injury.

H. Medical Treatment Following the Accident of December 11, 2023

Petitioner had a follow up appointment with Dr. Fernandez scheduled for January 24, 2024 for carpal tunnel syndrome. (PX 3). He did not seek medical treatment for the work-related accident of December 11, 2024 earlier because he had the appointment and did not want to have to report a new accident if the right wrist injury was an aggravation of the carpal tunnel syndrome. On January 24, 2024, Dr. Fernandez noted a history that Petitioner was doing well related to the right carpal tunnel release, continued to have numbness and tingling on the left side and continued to work as a commercial painter. (PX 3). Dr. Fernandez documented that about 6 weeks ago, Petitioner was lifting a 5 gallon jug of paint and left a pop along the ulnar aspect of the right wrist and had been having ulnar sided wrist pain since the accident. (PX 3). Dr. Fernandez recommended a CT and MRI of the right wrist due to the work-related accident. (PX 3). Dr. Fernandez noted that Petitioner had findings consistent with an exacerbation of a pisotriquetral arthritis or a TFCC tear. (PX 3). He recommended the left sided carpal tunnel release. (PX 3). Petitioner testified that he asked Dr. Fernandez not to take him off work.

Petitioner underwent the CT scan of the right wrist on February 20, 2024 at Midwest Orthopedics at Rush. (PX 6). The CT revealed dorsal intercalated segment instability and early developing SLAC wrist with mild degeneration and small corticated ossicles along the dorsal margin of the scaphoid and ulnar styloid likely due to the sequela of a remote injury and mild base of the thumb degenerative changes. (PX 6).

Petitioner underwent the MRI study on February 20, 2024 at Midwest Orthopedics at Rush. (PX 7). The MRI revealed complete tear of the scapholunate ligament with dorsal tilting of the lunate in keeping with dorsal intercalated segment instability, bone marrow edema in the lunate, tear or avulsion of the TFCC ulnar styloid attachment, mild base of thumb of thumb degenerative changes and mild ECU tendinosis. (PX 7).

Petitioner had a follow up appointment with Dr. Fernandez on February 28, 2024. (PX 3). Dr. Fernandez noted that Petitioner continued to have right wrist pain following an injury lifting a 5 gallon jug of paint and feeling a pop with ulnar pain. (PX 3). He stated that Petitioner requested to continue working full duty and recommended medication, splinting and a bone scan. (PX 3). Dr. Fernandez stated that Petitioner had significant symptoms in both hands from the carpal tunnel syndrome and the new accident. (PX 3).

Petitioner underwent the bone scan on March 20, 2024 at Edwards Elmhurst Health. (PX 8). The bone scan revealed mildly asymmetric radiotracer activity within the right carpal bones compared to the left. (PX 8).

Petitioner was evaluated by Dr. Fernandez on April 25, 2024. (PX 3). Dr. Fernandez discussed treatment options with Petitioner, including a steroid injection and surgery. (PX 3). The surgery included a wrist arthroscopy and PIN resection or proximal row carpectomy. (PX 3). Petitioner underwent the injection. (PX 3). Dr. Fernandez recommended that Petitioner remain off work. (PX 3).

On May 31, 2024, Dr. Fernandez documented that Petitioner received 20% relief from the injection. (PX 3). Dr. Fernandez recommended waiting to see if the injection helped. (PX 3). Dr. Fernandez discussed surgical opinions for the right wrist. (PX 3). On June 21, 2024, Petitioner had a telehealth appointment with Dr. Fernandez. (PX 3). He recommended that Petitioner undergo a right wrist arthroscopy with PIN resection. (PX 3).

Petitioner was last evaluation by Dr. Fernandez on July 26, 2024. (PX 3). Dr. Fernandez set forth an assessment of bilateral hand numbness and tingling with onset due to work activities as a commercial painter and right wrist injury lifting a 5 gallon bucket of pain in December 11, 2023. (PX 3). Dr. Fernandez continued to recommend the right wrist surgery. (PX 3). He set forth that Petitioner was unable to return to work. (PX 3).

On August 28, 2024, Dr. Fernandez prepared a work status note releasing Petitioner to return to work on September 3, 2024. (PX 3). Petitioner requested that Dr. Fernandez release him to return to work since

Dr. Vender released him and he was not receiving temporary total disability benefits. Petitioner elected to return to work due to financial reasons.

Petitioner does not have any follow up appointments with Dr. Fernandez scheduled. He wanted to undergo the left carpal tunnel surgery by Dr. Fernandez. He has not undergone the recommended surgery.

I. Medical Opinions of Dr. Fernandez, Petitioner's Treating Physicians

Dr. Fernandez prepared a narrative report dated August 13, 2023. (PX 9). Petitioner presented with bilateral carpal tunnel pain, numbness and tingling associated with his activities as a commercial painter and attributed to gripping. (PX 9). Dr. Fernandez documented a history of bilateral carpal tunnel syndrome with subjective complaints of numbness, tingling, pain and weakness in both hands. (PX 9). Petitioner had objective findings of a positive EMG and atrophy of the muscles bilaterally. (PX 9). Dr. Fernandez opined that Petitioner's bilateral carpal tunnel was related to his work activities as a commercial/industrial painter. (PX 9). The risk factors for carpal tunnel syndrome included frequent or repetitive gripping, grasping, pushing or pulling, or jobs that give a person calluses. (PX 9). There was no other activities contributing to the symptoms and Petitioner had calluses on both hands. (PX 9). Petitioner's findings were consistent with repeated or frequent gripping or grasping. (PX 9).

Dr. Fernandez noted that the paint gun was a contributing factor to the carpal tunnel; however, he noted that Petitioner used his left hand when engaging in his work activities. (PX 9). Dr. Fernandez stated that heavy or forceful activities often used both hands and while Petitioner may use his right hand, Petitioner would also have exposure on his left hand. (PX 9). Therefore, it was more probable that Petitioner's carpal tunnel syndrome was related to his work as an industrial painter on both sides. (PX 9).

Dr. Fernandez recommended surgery for the left side and found that the right sided surgery was reasonable and necessary. (PX 9). He found no evidence of malingering or magnification of pain. (PX 9). Dr. Fernandez recommended restrictions of light duty work. (PX 9). He stated that until the left hand carpal tunnel syndrome was addressed, Petitioner should not return to full duty work. (PX 9).

Dr. Fernandez agreed with Dr. Vender that the right side was causally related to the work activities. (PX 9). However, Dr. Fernandez stated that there were other work activities that Petitioner engaged in that

involved frequent gripping, grasping, pushing and pulling with the left hand that would expose him to left sided carpal tunnel syndrome. (PX 9). He noted that cleaning would involve forceful and frequent use of both hands. (PX 9).

The evidence deposition of Dr. Fernandez was completed on January 31, 2024. (PX 10). Dr. Fernandez testified that work factors are a risk factor for carpal tunnel syndrome; specifically, jobs that cause calluses. (PX 10 at 18). Jobs that require the use of hands more frequently create swelling in the hands and thickening of the tendons around the nerve increasing the pressure. (PX 10 at 18). Dr. Fernandez noted that Petitioner was released to return to work full duty on August 23, 2023 due to financial reasons. (PX 10 at 26-27). He stated that Petitioner continued to have symptoms on the left side when he was released. (PX 10 at 27). Petitioner had reached maximum medical improvement as it related to the right side by August 23, 2023. (PX 10 at 27). Dr. Fernandez testified that he recommends that workers in heavy physical jobs remain off work for three to four months following carpal tunnel syndrome. (PX 10 at 28). Dr. Fernandez testified that Petitioner was not released to return to work because he was normal. (PX 10 at 29). In fact, Petitioner's symptoms worsened and he still had significant problems. (PX 10 at 29).

Dr. Fernandez stated that Petitioner's job duties included persistent and forceful gripping and he spent at least 50% of the time performing that activity. (PX 10 at 33). He set forth a diagnosis of bilateral carpal tunnel syndrome. (PX 10 at 34). Petitioner had the subjective complaints of numbness and tingling in the median nerve distribution. (PX 10 at 34). Petitioner had the objective findings of irritability in the median nerve, atrophy of the thenar muscles and expansion in the two point discrimination in both hands. (PX 10 at 34). The subjective complaints were consistent with the objective findings. (PX 10 at 34).

Dr. Fernandez testified that Petitioner's work activities were a causal factor in the development of bilateral carpal tunnel syndrome. (PX 10 at 36). The basis for the opinion was Petitioners work in a job that required repeated and frequent gripping and grasping on both sides, including using a paint gun and the other activities associated with using a paint gun and working as an industrial painter. (PX 10 at 36). He noted that the job gave Petitioner calluses indicating that he was exposed to forceful and repeated gripping and grasping, which is a primary risk factor in carpal tunnel syndrome. (PX 10 at 37). Dr.

Fernandez explained that with forceful and repeated the tendon in the wrist becomes callused and thick, which puts more pressure on the carpal tunnel. (PX 10 at 38).

Dr. Fernandez stated that Petitioner was middle aged with an increased body mass and history of smoking; however, the biggest risk factor for carpal tunnel is how he uses his wrists at work. (PX 10 at 38). He stated that hand dominance does not play a role in carpal tunnel syndrome. (PX 10 at 39). Dr. Fernandez stated that Petitioner had to use both hands to perform heavy work activities. (PX 10 at 40).

Dr. Fernandez recommended left carpal tunnel surgery. (PX 10 at 41). Petitioner was temporarily totally disabled until August 23, 2023. (PX 10 at 41). The recommended surgery was casually related to Petitioner's work activities. (PX 10 at 42).

Dr. Fernandez reviewed the report of Dr. Vender. (PX 10 at 42). Dr. Fernandez agreed that Petitioner had carpal tunnel syndrome and that Petitioner required surgery on both sides. (PX 10 at 42). He agreed that the right sided carpal tunnel syndrome was related, but disagreed that the left sided carpal tunnel syndrome was not related. (PX 10 at 42). Specifically, Dr. Fernandez disagreed that the left side was not affected. (PX 10 at 42). Petitioner used the paint gun with both hands, but also performed other activities with the left hand that would cause carpal tunnel syndrome. (PX 10 at 43). Dr. Fernandez testified that the research supported his opinion that heavy jobs use both hands causing carpal tunnel syndrome. (PX 10 at 44).

Dr. Fernandez defined repetitive as less than one-third of the work day. (PX 10 at 50). Dr. Fernandez believed that Petitioner's work was either frequent or constant. (PX 10 at 51). Dr. Fernandez testified that a break in work would not affect his opinions since it is the overall exposure. (PX 10 at 61). He did not believe that use of crutches over a short period of time would contribute to the carpal tunnel syndrome. (PX 10 at 63). Dr. Fernandez clarified that his causation opinion was not based on the use of the spray gun. (PX 10 at 66).

J. Medical Opinions of Dr. Vender, Respondent's Section 12 Physician

Petitioner was examined by Dr. Vender at the request of Respondent on several occasions. He was examined on March 2, 2023. Petitioner testified that Dr. Vender did not ask him to describe his job duties

for Respondent. Petitioner was examined on June 26, 2023 and August 21, 2024. He did not receive a copy of Dr. Vender's report of June 26, 2023 until August of 2023.

Kerry Huckstep scheduled Petitioner for a Section 12 exam with Dr. Vender for the work-related accident of February 6, 2023. He sent letters to Dr. Vender summarizing Petitioner's job description and medical treatment. (RX 4); (RX 5). The first letter sent to Dr. Vender was dated February 22, 2023. (RX 4). Mr. Huckstep stated that Respondent manufactures large electrical equipment that arrived in flat or formed with larger cabinets with doors and covers and smaller parts that come in filthy. (RX 4). Petitioner cleaned the parts with paint thinner and a rag and wiped them down multiple time to get into the cracks and crevices. (RX 4). Petitioner painted the items with a spray gun connected to a 5 gallon bucket with two hoses connected to the spray gun. (RX 4). The weight of the spray gun and hoses was 12 pounds and the gun is activated by pulling a trigger with two small fingers. (RX 4). The letter set forth that Petitioner used his right hand to paint, but more recently had been using his left hand. (RX 4). Mr. Huckstep testified that the letter was based on Petitioner's recorded statement.

A second letter was sent to Dr. Vender on June 12, 2023. (RX 5). Mr. Huckstep summarized the medical treatment that Petitioner was last evaluated by Dr. Vender. (RX 5). Mr. Huckstep stated that "you did not feel that the activity of cleaning the parts or use of the spray gun would contribute to the development of the left sided CTS since the patient utilized the right hand to hold the gun and hose." (RX 5).

The evidence deposition of Dr. Vender was completed on April 19, 2024. (RX 6). Dr. Vender testified that the risk factors for carpal tunnel were body mass, smoking, diabetes and hypothyroidism. (RX 6 at 11). Dr. Vender described Petitioner's job duties as an industrial painter, who cleaned flat or formed parts of steel with paint thinner and a rag. (RX 6 at 12). The items were then hung and painted with a gun connected to a five gallon bucket of paint with hoses. (RX 6 at 12). Petitioner pulled the trigger with his two small fingers and his thumb balanced the grip. (RX 6 at 13). He used his right hand to spray paint. (RX 6 at 13).

Dr. Vender set forth a diagnosis of bilateral carpal tunnel syndrome. (RX 6 at 14). Dr. Vender found that the right side carpal tunnel syndrome was caused by Petitioner work activities because his right hand

was more involved in the work activities. (RX 6 at 14). Dr. Vender found that the left carpal tunnel syndrome did not have a causal relationship to work. (RX 6 at 14). He stated that Petitioner used the spray gun 50% of the time with the right hand so it contributed to the carpal tunnel syndrome. (RX 6 at 15). He did not find that the cleaning activities would cause carpal tunnel syndrome. (RX 6 at 15). He set forth that gripping would elicit symptoms in the hand, so he would limit Petitioner's ability to grip at work. (RX 6 at 16). As of June 26, 2024, Dr. Vender found that Petitioner had reached maximum medical improvement as it related to the right hand. (RX 6 at 18). Petitioner still had left sided symptoms. (RX 6 at 18). Dr. Vender testified that after two to three months following surgery, Petitioner could have residual numbness, so maximum medical improvement would be at three months. (RX 6 at 19). Dr. Vender stated that Petitioner could return to work as it related to his right hand, and since he did not hold the paint in his left hand, he could work as well. (RX 6 at 19). His opinion regarding causation did not change. (RX 6 at 19).

Dr. Vender did not summarize in detail Petitioner's work activities. (RX 6 at 21). He relied on the job description provided in the February 22, 2023 cover letter. (RX 6 at 22). He did not ask Petitioner if the job description was accurate. (RX 6 at 22). Dr. Vender testified that Petitioner may have used the spray gun with his left hand; however, he did not know the percentage that he used the left hand. (RX 6 at 22). Dr. Vender testified that if Petitioner did not use the spray gun for 50% of the day, then the carpal tunnel would not be related; however, if he used the left hand 50% of the day, it would be related. (RX 6 at 23). If he used the spray gun 40% of the time, then it would not be related. (RX 6 at 24). He believe that 50% was reasonable for causation. (RX 6 at 24). Dr. Vender agreed that forceful gripping would contribute to carpal tunnel syndrome. (RX 6 at 24). He acknowledged that having a hand in an awkward position could cause symptoms of carpal tunnel syndrome. (RX 6 at 25).

Dr. Vender did not believe that having symptoms of carpal tunnel syndrome constituted an aggravation, but admitted that people only seek medical attention when they have symptoms. (RX 6 at 26). Dr. Vender agreed that Petitioner had bilateral carpal tunnel syndrome and surgery was necessary. (RX 6 at 26-27). Dr. Vender acknowledge that working would elicit symptoms in Petitioner's left hand. (RX 6 at 27). He admitted that Petitioner had not reached maximum medical improvement in June 2023. (RX 6 at 28). Dr.

Vender stated that Petitioner could not perform persistent gripping in his left hand, but felt that he did not perform gripping as part of his job duties. (RX 6 at 28). He stated that persistent activity would be for more then an hour without a break. (RX 6 at 29).

K. Return to work Following the December 11, 2023 Accident

Following the work-related accident of December 11, 2023, Petitioner returned to work for Respondent on September 4, 2024. Petitioner returned to work as a painter for Respondent. Petitioner returned to work due to financial reasons since he was released by Dr. Vender. Petitioner had to work to pay his bills. While working, Petitioner experienced pain in his hands and numbness and tingling in his left hand. Petitioner is still working for Respondent.

L. Current Complaints

Petitioner testified regarding his subjective complaints. Petitioner has numbness, tingling and swelling in his hands. Petitioner wakes up every night due to the tingling in his left hand. Petitioner has difficulty sleeping.

III. Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being in connection with the bilateral hands, including bilateral carpal tunnel syndrome, was causally connected to the work-related accident of February 6, 2023. The Arbitrator relies on the credible and unrebutted testimony of Petitioner, the medical records admitted into evidence and the medical opinions of Dr. Fernandez. *See International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the claimant's treating physicians). The accident "need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 797 N.E.2d 665 (2003) (emphasis in original). Respondent does not dispute that the right sided carpal tunnel syndrome was causally connected to the work-related accident of February 6, 2023. Accordingly, the only disputed

issue is medical causation of the left hand and carpal tunnel syndrome. The Arbitrator considered the opinions of Dr. Vender, the Section 12 physician, and accorded them little weight since Dr. Vender did not comprehend Petitioner's job duties and relied solely on the job description provided by Mr. Huckstep, which was incomplete and not confirmed with Petitioner.

A. Medical Opinions of Dr. Fernandez

Petitioner established medical causation of the left carpal tunnel syndrome through the medical opinions of Dr. Fernandez. Dr. Fernandez set forth a diagnosis of bilateral carpal tunnel syndrome confirmed by an EMG. Dr. Fernandez opined that Petitioner's bilateral carpal tunnel was related to his work activities as a commercial/industrial painter. The basis for the opinion was Petitioners work in a job that required repeated and frequent gripping and grasping on both sides, including using a paint gun and the other activities associated with using a paint gun and working as an industrial painter. The risk factors for carpal tunnel syndrome included frequent or repetitive gripping, grasping, pushing or pulling, or jobs that give a person calluses. There was no other activities contributing to the symptoms and Petitioner had calluses on both hands. Petitioner's findings were consistent with repeated or frequent gripping or grasping. Dr. Fernandez stated that heavy or forceful activities often used both hands and while he may use his right hand, Petitioner would also have exposure on his left hand. It was more probable that Petitioner's carpal tunnel syndrome was related to his work as an industrial painter on both sides. Dr. Fernandez stated that there are other work activities that Petitioner engaged in that involved frequent gripping, grasping, pushing and pulling with the left hand that would expose him to left sided carpal tunnel syndrome. He noted that cleaning would involve forceful and frequent use of both hands. He explained that jobs that require the use of hands more frequently create swelling in the hands and thickening of the tendons around the nerve increasing the pressure. Dr. Fernandez stated that Petitioner's job duties included persistent and forceful gripping, spending at least 50% of the time performing that activity. He noted that the job gave Petitioner calluses indicating that he was exposed to forceful and repeated gripping and grasping, which is a primary risk factor in carpal tunnel syndrome.

The Arbitrator finds that Dr. Fernandez understood Petitioner's job duties. It is not disputed that repetitive and forceful gripping and grasping can cause carpal tunnel syndrome. Petitioner's unrebutted testimony established that he used both hands in the performance of his job duties. The cleaning involved grasping, flipping, turning and wiping parts of cabinets that were awkwardly shaped and varied in weigh from 2 pounds to 100 pounds. Further, Petitioner used the spray gun to paint. He primarily used his right hand to operate the trigger until about 3 years ago when he started experiencing symptoms in his right hand and began using his left hand to operate the paint gun. The hand not operating the trigger, had to hold, grasp and manipulate the hose attached to the spray gun. While watching the video, it is clear that it is impossible to operate the spray gun with only one hand. Accordingly, the Arbitrator finds that Petitioner was required to use his left hand for forceful gripping and grasping, including cleaning, holding the cabinet parts to clean, hold the hose and spray paint. Further, he had been using his left hand to operate the paint gun for three years.

The Arbitrator considered the recorded statement. He does not find that recorded statement contradict Petitioner's testimony or Dr. Fernandez's understanding of Petitioner's job duties. Further, it is clear that the recorded statement was not complete and did not provide as much detail as Petitioner's testimony, the pictures of Petitioner's job site and video of Petitioner painting. Petitioner primarily used his right hand to operate the paint gun until he started using his left hand more after his right hand began exhibiting symptoms of carpal tunnel syndrome. While the statement is incomplete, it is consistent with Petitioner's testimony. Accordingly, the Arbitrator finds Dr. Fernandez's testimony persuasive based on Petitioner's use of the left hand to perform his job duties.

In according greater weight to the medical opinions of Dr. Fernandez, Petitioner's treating physicians, the Arbitrator relies on *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the petitioner's treating physicians). The Arbitrator also finds that the opinions of Dr. Fernandez were supported by the objective evidence, medical records, Petitioner's testimony, the pictures of Petitioner's job site and video of Petitioner painting. Accordingly, the Arbitrator finds that Petitioner's current

condition in connection with bilateral carpal tunnel syndrome were causally connected to the work-related accident of February 6, 2023.

B. Medical Opinions of Dr. Vender, Respondent's Section 12 Physicians

The Arbitrator considered the opinions of Dr. Vender, Respondent's Section 12 physician, and accord them little weight. *See International Vermiculite Company,* 77 Ill.2d 1. The Arbitrator finds that Dr. Vender did not comprehend Petitioner's job duties, relied solely on the incomplete job description provided by Mr. Huckstep, failed to ask Petitioner about his job duties and failed to consider Petitioner's use of his left hand.

Dr. Vender testified that he risk factors for carpal tunnel were body mass, smoking, diabetes and hypothyroidism. Dr. Vender described Petitioner's job duties as an industrial painter, who cleaned flat or formed parts of steel with paint thinner and a rag. The items were hung and painted with a gun connected to a five gallon bucket of paint with hoses. Petitioner pulled the trigger with his two small gingers and his thumb balanced the grip. He used his right hand to spray paint.

Dr. Vender set forth a diagnosis of bilateral carpal tunnel syndrome. Dr. Vender found that the right side carpal tunnel syndrome was caused by his work activities because he used his right hand more than his left. He found that the left carpal tunnel syndrome did not have a causal relationship to work. He stated that Petitioner used the spray gun 50% of the time with the right hand so it contributed to the carpal tunnel syndrome. He did not find that the cleaning activities would cause carpal tunnel syndrome. He set forth that gripping would elicit symptoms in the hand.

Dr. Vender did not summarize in detail Petitioner's work activities. He relied on the job description provided in the February 22, 2023 cover letter. He did not ask Petitioner if the job description was accurate. Dr. Vender testified that Petitioner may have used the spray gun with his left hand; however, he did not know the percentage that he used the left hand. Dr. Vender testified that if Petitioner did not use the spray gun for 50% of the day, then the carpal tunnel would not be related; however, if he used the left hand 50% of the day, it would be related. If he used the spray gun 40% of the time, then it would not be related. He believe that 50% was reasonable for causation. Dr. Vender agreed that forceful gripping would contribute

to carpal tunnel syndrome. He acknowledged that having a hand in an awkward position could cause symptoms of carpal tunnel syndrome. Dr. Vender acknowledge that working would elicit symptoms in Petitioner's left hand.

Dr. Fernandez reviewed the report of Dr. Vender and disagreed regarding medical causation of the left hand. Dr. Fernandez noted that the paint gun was a contributing factor to the carpal tunnel; however, he noted that Petitioner used his left hand when engaging in his work activities. Dr. Fernandez stated that there were other work activities that Petitioner engaged in that involved frequent gripping, grasping, pushing and pulling with the left hand that would expose him to left sided carpal tunnel syndrome. He noted that cleaning would involve forceful and frequent use of both hands. Petitioner used the paint gun with both hands, but also performed other activities with the left hand that would cause carpal tunnel syndrome. Dr. Fernandez testified that the research supported his opinion that heavy jobs use both hands causing carpal tunnel syndrome.

The Arbitrator finds that Dr. Vender did not comprehend Petitioner's full job duties and underestimated Petitioner's use of the left hand. It is clear from Petitioner's testimony that he used his left hand to grip and grasp the parts to clean and grasped the hose on the spray gun. Further, three years ago, Petitioner started to use his left hand to operate the spray gun or use of the left hand while gripping the hose. Dr. Vender did not appear to account for Petitioner's increased use of the spray gun with left hand. The Arbitrator finds that Petitioner was required to use his left hand to grip and grasp cabinet parts, grasp the hose and three years ago use the gun. It is significant that Dr. Vender agreed that forceful gripping caused carpal tunnel syndrome. He also admitted that the forceful gripping caused pain and symptoms in Petitioner's hands. Since Petitioner used both hands while performing his job duties for Respondent, the Arbitrator finds that the left sided carpal tunnel syndrome was causally related to the work-related accident of February 6, 2023. Dr. Fernandez testified and Dr. Vender agreed that forceful gripping caused carpal tunnel syndrome. Accordingly, the Arbitrator finds that Petitioner's repetitive use of his hands was enough to cause the carpal tunnel syndrome.

In support of the Arbitrator's decision relating to "K," prospective medical care, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment for medical treatment recommended by his treating physician, Dr. Fernandez, including the left carpal tunnel surgery. The Arbitrator finds that the medical treatment constitutes reasonable and necessary medical care. In support of this finding, the Arbitrator relies on Petitioner's credible and unrebutted testimony, the medical records admitted into evidence and the opinions of Dr. Fernandez.

Dr. Fernandez diagnosed Petitioner with bilateral carpal tunnel syndrome. The diagnosis was confirmed by the EMG performed on January 23, 2023. Petitioner underwent the right carpal tunnel surgery on April 17, 2023. Dr. Fernandez recommended that Petitioner undergo the left carpal tunnel surgery.

Dr. Vender, Respondent's Section 12 physician, agreed that the left carpal tunnel surgery was reasonable medical treatment. However, he disagreed that the left carpal tunnel syndrome was causally related to the work-related accident of February 6, 2023. Respondent's only defense to prospective medical treatment is causal connection. Having found that Petitioner's left carpal tunnel syndrome was casually connected to the work-related accident of February 6, 2023, the Arbitrator awards payment for the left carpal tunnel surgery recommended by Dr. Fernandez.

Lastly, the Arbitrator finds that Respondent failed to submit the recommended surgery through Utilization Review. Section 8.7(3) of the Act states that:

> 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 the medical treatment is excessive in compliance with an accredited utilization review program under this Section. 820 ILCS 305/8.7(3).

Instead of submitting the recommended surgery through Utilization Review, the employer requested that Petitioner be examined by Dr. Vender pursuant to Section 12 of the Act. Section 12 states that:

> An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at any time and place reasonably convenient for the employee, either within or without the State of Illinois, for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which

> may be due the employee from time to time for disability according to the provision of the Act. 820 ILCS 305/12.

Reading the Act as a whole and relying on the plain language of the Act, Respondent can only deny payment for medical treatment based on Utilization Review. Since Respondent did not submit the medical treatment through Utilization Review, it does not have a basis under the Act to deny payment for the recommended treatment. The opinions of Dr. Vender should not be considered in connection with payment for the recommended surgery based on Section 8.7 of the Act. In support of this decision, the Arbitrator relies on *Parisi v. GEM Construction Company*, 13 IWCC 0489, 2013 WL 3381140 (IWCC May 3, 2013) (holding that the claimant was entitled to payment for a work conditioning program based on the employer's failure to obtain a Utilization Review that found the program to be non-certified).

Based on the medical records and opinions of Dr. Fernandez, the Arbitrator awards Petitioner payment for the medical treatment, including left carpal tunnel surgery. In support of her decision, the Arbitrator cites *Plantation Manufacturing Company v. Industrial Commission*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2d Dist. 1997).

In support of the Arbitrator's decision relating to "K," temporary total disability, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from February 18, 2023 through June 19, 2023 and June 26, 2023 through August 23, 2023. The Arbitrator relies on the credible and unrebutted testimony of Petitioner, the medical records submitted into evidence and the opinions of Dr. Fernandez. Respondent agreed that Petitioner was entitled to payment of temporary total disability from February 18, 2023 through June 19, 2023. The only period in dispute is June 26, 2023 through April 23, 2023.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" (quoting *Manis v. Industrial Commission*, 172 Ill.Dec. 95, 595 N.E.2d 158 (1st Dist. 1992)). The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* In *Freeman United Coal Mining Company*, the court held

that the condition of the claimant's knee had not stabilized and that the petitioner was thus entitled to TTD benefits. *Id.* The court based its decision on the fact that the claimant had not been released to full-duty work and future medical care was being considered by the claimant's treating physicians. *Id.*

The medical records admitted at hearing establish that Petitioner was under active medical care and unable to work from June 26, 2023 through August 23, 2023. Petitioner was under the active medical care of Dr. Fernandez. Dr. Fernandez recommended that Petitioner remain off work and undergo left carpal tunnel surgery. Petitioner was also participating in physical therapy at Athletico through October 9, 2023. Dr. Fernandez only released Petitioner to return to work because of financial reasons. As of August 23, 2023, Dr. Fernandez continued to recommend the left carpal tunnel surgery and Petitioner continued to have ongoing subjective complaints. Accordingly, Petitioner's condition had not stabilized and he was not able to work from June 26, 2023 through August 23, 2023. Based on the medical records of admitted at hearing, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from June 26, 2023 through August 23, 2023.

The Arbitrator considers the opinions of Dr. Vender, Respondent's Section 12 physician, and rejects them. With regard the left hand, Dr. Vender agreed that Petitioner should undergo surgery for the carpal tunnel syndrome and the condition had not stabilized. He set forth that Petitioner could work because he did not use his left hand. However, Dr. Vender did not fully comprehend Petitioner's job duties. It is clear that he used the stray gun, grasped the hose and cleaned, gripped, flipped and wiped extensively with his left hand. Accordingly, the Arbitrator rejects Dr. Vender's opinion that Petitioner was able to work with regard to this left hand.

With regard to the right hand, Dr. Vender admitted that as of his examination on June 26, 2023, Petitioner had not reached maximum medical improvement and was still having symptoms in his right hand. Further, Petitioner was participating in physical therapy. Since Petitioner had not reached maximum medical improvement, was under active medical care and had ongoing subjective complaints, the Arbitrator finds Dr. Fernandez's recommendation that Petitioner remain off work while completing physical therapy and until his symptoms resolved. Petitioner did not receive Dr. Vender's report until August 2023 at which

point, he returned to work due to financial reasons. Accordingly, the Arbitrator rejects Dr. Vender's opinion that Petitioner was able to work with regard to this right hand.

Based on the medical records submitted into evidence and the medical opinions Dr. Fernandez, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits for the undisputed period of February 18, 2023 through June 19, 2023 and the further period of June 26, 2023 through August 23, 2023 since Petitioner was under active medical care for his left and right hand, not able to return to work, had not reached maximum medical improvement and his condition had not stabilized.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002652
Case Name	Jeffrey L. Perry v. Illinois Switchboard
Consolidated Cases	23WC005223
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0299
Number of Pages of Decision	37
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel Egan

DATE FILED: 10/26/2026

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFREY L. PERRY,

Petitioner,

vs. NO: 24 WC 2652

ILLINOIS SWITCHBOARD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, 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 March 27, 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 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 $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.

OCTOBER 26 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/30/26
FJS/mek
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

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Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Catherine Krenz Doan
Respondent Attorney	Daniel Egan

DATE FILED: 3/27/2026

/s/ Paul Seal, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 24 2026 3.63%

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jeffrey L. Perry
Employee/Petitioner

v.

Illinois Switchboard
Employer/Respondent

Case # **24WC002652**

Consolidated cases: **23WC005223**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 29, 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 present 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, **12/11/2023**, 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 $**62,804.56**; the average weekly wage was **$1,207.78** .

On the date of accident, Petitioner was **63** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**13,131.65** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**13,131.65**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$805.19**/week for **18-6/7** weeks, for the period of **4/25/2024-9/3/2024**, which is the period of temporary total disability for which compensation is due.
- Respondent shall authorize and provide payment for the medical treatment, including the right hand/wrist surgery, recommended by Petitioner's treating physicians, Dr. Fernandez. The authorization shall be in writing and forwarded to Petitioner's attorney.
- The issue of medical bills was deferred, but not waived.
- See Rider attached hereto and made a part of hereof.

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

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

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



Signature of Arbitrator

MARCH 27 2026

Jeffrey L. Perry v. Illinois Switchboard
Case Number: 24WC002652 (consolidated with 23WC005223)
D/A: 12/11/2023

RIDER TO ARBITRATION DECISION

I. Introduction

Evidence in the above-captioned claim was present to Arbitrator Seal on August 29, 2025. On that date, the Arbitrator heard the testimony of Petitioner. The Arbitrator also received into evidence various exhibits, which included: 1) medical records; 2) diagnostic study reports; 3) operative report; 4) physical therapy records; 5) narrative report of Dr. Fernandez; 6) deposition transcripts of Dr. Fernandez and Dr. Vender; and 6) photographs of Petitioner's work site.

The Arbitrator is considering the disputed issues of accident, medical causation, prospective medical care and temporary total disability benefits. The parties deferred the issues of payment of medical bills. The issue is not waived and can be presented by the parties at a later date. The instance case is consolidated with case number 23WC005223. A separate decision will be issued in connection with case number 23WC005223.

Before making conclusions of law in connection with this case, the Arbitrator makes the following findings of fact:

II. Findings of Fact

Petitioner testified before the Arbitrator on August 29, 2025. The Arbitrator finds that Petitioner's testimony was credible and unrebutted. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

A. Work History

Petitioner testified that he was employed by Respondent as a painter. He had been employed by Respondent for 35 years since September 5, 1989. He became a painter for Respondent in 2006. Prior to

that he was employed as a driver and assembler. Petitioner help with painting before he officially became a painter. Petitioner was a member of IBEW Local 134. He is right hand dominant, 6'2" tall and weighed 232 pounds. Petitioner has calluses on both hands. Petitioner used to smoke. He smoked 2 packs per week. He quit smoking in August 2024.

Petitioner described his job duties as a painter for Respondent. Petitioner received all the cabinets and covers and prepped and painted them. Petitioner worked 8 hours per day. Petitioner had a 20 minute break and a 30 minute lunch break. Petitioner worked 8.5 hours per day with the breaks.

Petitioner lifted, flipped, hung and moved metal parts, loose metal covers and parts for electrical switch gears. He constantly moved, lifted, turned and wiped parts. Petitioner lifted up to 60 pounds. He lifted paint buckets that weighed 60 pounds. He also lifted large, 94 inch frames of electrical equipment, and cabinets. The cabinets weighed 300 pounds. Petitioner did not lift the cabinet. Rather, he laid the cabinets on their side on a dolly. Petitioner constantly reached to paint. He performed constant grasping. He grasped and squeezed the paint gun, hose, covers and boxes to lift and move them. Petitioner testified that he cleaned 50% of the time and painted 50% of the time. However, the timing varied day by day. On some days, he did more painting than others. Petitioner set up his paint area. It took Petitioner 5 minutes to set up the paint area.

Petitioner described how he cleans. Petitioner testified that parts were delivered to his area. He wiped them down and flipped them over. The parts were all different sizes and weights. The parts weighed between to 3 pounds and a couple of hundred pounds. Petitioner wore rubber gloves and used paint thinner on rags. He folded the rags into quarters and soaked them in paint thinner. Petitioner used the rags to clean the cracks, crevices and corners at all different angles. Petitioner's hands twisted in all directions. He placed pressure on his hands while he cleaned.

Petitioner described how he used the spray painter. He testified that using the spray painter was a two handed job and the gun cannot be lifted with one hand. The paint gun had two thick hoses that were wired together that Petitioner held in his opposite hand about three feet from the end of the gun. The hose controlled the painting. Petitioner held the gun in one hand and the hose in the other at all times. The gun

could not be held in the air with one hand. Petitioner did not think of what his other hand was doing at all times when he gave the recorded statement, but the paint cannot be controlled without holding the hose. Petitioner testified that his left hand held the hose for the entire time that he sprayed. Petitioner's right hand sprayed and the left hand held the hose and maneuvering it with small twists of the wrist. If Petitioner held the gun with his left hand, then the right hand held the hose and he twisted the hose as he painted because the hose was stiff. If he did not twist the hose, then he had to fight with the gun to move the hose.

Petitioner testified that up until about three years ago, he primarily used his right hand to use the paint gun. Approximately three years ago, Petitioner began experiencing tingling in his hands that became worse. Petitioner testified that his right hand was so tingly and numb that he had to use the gun with his left hand. Petitioner testified that during his time as a painter, he would use his left hand to paint when he could not reach spots. Petitioner used both hands to paint and clean. Petitioner squeezed the gun trigger with his two middle fingers. Petitioner has calluses on both hands.

Pictures of Petitioner's job were admitted into evidence. (PX 13). Picture 1 depicted the covers and large side plates. (PX 13 at 1). Picture 2 depicted frames for equipment and the cover system. (PX 13 at 2). Picture 3 depicted Petitioner's painting area and the area where he assembled the equipment. (PX 13 at 3). Picture 4 depicted more covers as were delivered to Petitioner. (PX 13 at 4). The covers came on a skid and Petitioner washed them 2 to 3 times. (PX 12 at 4). Picture 5 depicted the covers, pieces and parts for the inside of the cabinet. (PX 13 at 5). Picture 6 depicted the bottom of a large outdoor section. (PX 13 at 6). It contained black rudder and weighed 350 pounds. (PX 13 at 6). Petitioner testified that all the parts have to be painted and flipped. (PX 13 at 7). The parts could weigh 250 pounds and had to be painted and primed. (PX 13 at 7). Petitioner had to flip them over at least 6 times to wash, prime and paint them. (PX 13 at 7). Picture 7 depicted another picture of the boxes that have to be painted. (PX 13 at 7). Pictures 8 depicted the corner section. (PX 13 at 8). Petitioner had to lift the box up onto a forklift, reach inside and wash and clean the section. (PX 13 at 8). The box was full of grinding dust from the welder and the inside of the box had piles of grimy dust and oil that had to be cleaned out. (PX 13 at 8). Petitioner had to use a stick with a rag attached to clean inside. (PX 13 at 8). Painting the box was difficulty. (PX 13 at 8).

Picture 9 depicted the same box in the position that Petitioner prepared and washed it in. (PX 13 at 9). The box only had one opening that he can clean through. (PX 13 at 9). Pictures 10 and 11 depicted the spray gun and attached hose. (PX 13 at 10-11). Pictures 12 through 14 depicted the cabinets and frames that have to be cleaned and painted. (PX 13 at 12-14). The cabinets came to Petitioner freshly welded, greasy and dirty with grime and dust and had to be cleaned. (PX 13 at 12-14). Picture 16 depicted the pieces and supports. (PX 13 at 16). Some of the pieces were 300 pounds. (PX 13 at 16). The pieces were hung up to paint them. (PX 13 at 16). They were 10-gauge steel and very heavy. (PX 13 at 16). Petitioner had to hang the pieces to paint them. (PX 13 at 16). Pictures 17 and 18 depicted the front covers and parts. (PX 13 at 17-18). Picture 19 depicted the paint bucket attached to the spray gun. (PX 13 at 19). Picture 20 depicted the 5 gallon pain bucket that Petitioner had to lift. (PX 13 at 20).

B. Prior Medical Treatment

Petitioner underwent a right hip replacement in June 2022. He returned to work in October 2022. The first week he returned, he worked 24 hours. Petitioner used a walker after the hip replacement surgery.

Petitioner testified regarding his prior medical treatment for his bilateral hands. Petitioner began experiencing symptoms, including numbness and tingling in his hands, approximately three years prior to February 6, 2023. He testified that he experience symptoms from carpal tunnel syndrome around 2021. He experienced symptoms in his right hand first, then his left. Petitioner had not sustained any accidents or injuries involving his hands prior to February 6, 2023. Prior to February 6, 2023, Petitioner had never lost time from work due to the condition of his hands. He did not know about carpal tunnel syndrome until he was diagnosed by Dr. Bednard. He thought carpal tunnel syndrome was only for people who type a lot.

Petitioner was examined by his primary care doctor, Dr. Bednard on October 11, 2022. (PX 1); (RX 9). Petitioner complained of right hand numbness and tingling. (PX 1). Dr. Bednard recommended that the right hand condition be monitored. (PX 1).

Petitioner was examined by Dr. Bednard on November 29, 2022. (PX 1). Petitioner complained of bilateral numbness and tingling in is hands. (PX 1). The numbness and tingling was worse when he started working as a painter again. (PX 1). Dr. Bednard recommended an EMG. (PX 1).

The EMG was completed on January 23, 2023 at Northwestern. (PX 2). The EMG revealed severe right and moderate left median neuropathy of the wrists, or carpal tunnel syndrome, and evidence of chronic, but not active, radiculopathies of the L4, L5 and C8 nerve roots. (PX 2).

C. Work-Related Accident of February 6, 2023

On February 6, 2023, Petitioner as performing his job duties for Respondent. Petitioner was painting. He sought medical treatment with Dr. Bednard on February 6, 2023. Dr. Bednard advised Petitioner to remain off work. This was the first time that Petitioner was advise to remain off work due to his hand condition.

D. Medical Treatment Following the Accident of February 6, 2023

Petitioner was examined by Dr. Bednard on February 6, 2023. (PX 1). Dr. Bednard set forth an assessment of bilateral carpal tunnel syndrome. (PX 1). He noted that Petitioner worked as a painter and the carpal tunnel was made worse by the work. (PX 1). Dr. Bednard stated that carpal tunnel was confirmed by the EMG and the right hand was worse than the left hand. (PX 1). He referred Petitioner to a hand surgeon and recommended that he remain off work. (PX 1).

Petitioner was examined by Dr. Kadow on February 8, 2023. (PX 1). Petitioner presented with a two to three year history of progressive numbness and tingling in his bilateral hands. (PX 1). Dr. Kadow noted that Petitioner worked as a painter for decades and felt that the carpal tunnel was related to work. (PX 1). Dr. Kadow set forth an assessment of bilateral carpal tunnel syndrome. (PX 1). She recommended surgical intervention especially on the right side. (PX 1). She recommended that Petitioner return to work. (PX 1); (RX 1).

Petitioner called Dr. Kadow's office on February 16, 2023 to clarify his work restrictions since Dr. Bednard recommended that he remain off work and Dr. Kadow released him to return to work. (PX 1). On February 20, 2023, Dr. Kadow authored a work status note stating that Petitioner could return to work with the restrictions of light use of the bilateral hands, no lifting, pushing, pulling over 1 to 2 pounds, no repetitive gripping or force through both hands and sedentary or desk work. (PX 1). Respondent was not

able to accommodate the restrictions. On February 20, 2023, Dr. Bednard stated that painting made Petitioner's condition worse. (PX 1).

Petitioner elected to undergo medical treatment with Dr. Fernandez. (PX 3). Petitioner's wife found Dr. Fernandez. Petitioner was initially examined by Dr. Fernandez on March 30, 2023. (PX 3). Petitioner presented with bilateral hand complaints of numbness and tingling from his work activities as a commercial painter. (PX 3). Petitioner's attributed the onset and worsening of his condition to the activities using a paint sprayer and gripping. (PX 3). His symptoms were worse with closing or gripping with his hands. (PX 3). Dr. Fernandez recommended that Petitioner undergo surgery for his bilateral hands, right first. (PX 3). He recommended that Petitioner remain off work. (PX 3). Dr. Fernandez stated that Petitioner's bilateral carpal tunnel syndrome was causally related to his work activities as a commercial painter due to the repeated and forceful gripping and grasping over time. (PX 3).

Petitioner underwent the right carpal tunnel release on April 17, 2023 with Dr. Fernandez. (PX 4). The surgery was performed at Gold Coast Surgical Center. (PX 4).

Petitioner remained under the post-operative care of Dr. Fernandez. (PX 3). Post-operative care included follow up appointments, occupational therapy and activity modification. (PX 3). Petitioner underwent occupational therapy at Athletico. (PX 5).

On June 1, 2023, Dr. Fernandez examined Petitioner. (PX 3). Petitioner was improving on the right side; however, he continued to experience left sided symptoms, including numbness and tingling. (PX 3). Dr. Fernandez recommended that Petitioner remain off work, continue to participate in occupational therapy and undergo surgery for the left side. (PX 3). Petitioner continued to participate in occupational therapy at Athletico. (PX 5).

Petitioner was evaluated by Dr. Fernandez on July 13, 2023. (PX 3). Petitioner continued to experience worsening left sided symptoms. (PX 3). Dr. Fernandez recommended that Petitioner remain off work and undergo left sided carpal tunnel surgery. (PX 3). Petitioner continued to participate in occupational therapy. (PX 3).

Petitioner was examined by Dr. Fernandez on August 23, 2023. (PX 3). Petitioner continued to experience pain and symptoms in his left hand. (PX 3). Dr. Fernandez recommended a left carpal tunnel release. (PX 3). He noted that since Petitioner was not receiving benefits, he was under a significant hardship. (PX 3). Thus, he released Petitioner to return to work without restrictions. (PX 3). Petitioner was discharged from occupational therapy on October 9, 2023. (PX 5).

Petitioner was examined by Dr. Fernandez on October 11, 2023. (PX 3). Dr. Fernandez documented that Petitioner had significant complaints of numbness and tingling in his left hand. (PX 3). Petitioner's right hand was doing better. (PX 3). Petitioner returned to work since he was not being paid and experienced significant pain and weakness while working. (PX 3). Dr. Fernandez recommended a left carpal tunnel release. (PX 3). He set forth that since Petitioner had been a commercial painter for 33 years, the carpal tunnel was work related. (PX 3). Dr. Fernandez set forth an assessment of bilateral hand numbness and tingling with onset due to work activities as a commercial painter, postoperative right wrist carpal tunnel syndrome left wrist carpal tunnel syndrome, right wrist carpal tunnel release on April 17, 2023 and EMG with evidence of carpal tunnel syndrome. (PX 3). Petitioner scheduled a follow up appointment for January 24, 2024.

E. Post-Accident Employment

Petitioner returned to work for Respondent on August 23, 2023. Petitioner returned to work due to financial reasons because he was not being paid temporary total disability benefits. Petitioner had some scar tissue in his right hand and tingling and numbness in his left hand. Between February 6, 2023 and December 11, 2023, Petitioner did not sustain any new accidents or injuries involving his hands.

F. Work-Related Accident of December 11, 2023

Petitioner was performing his job duties for Respondent on December 11, 2023. Petitioner was mixing paint. He recalls the day because he mixes paint on Mondays. Petitioner lifted the paint onto a table with both hands. He had both hands on the bucket and he lifted it onto the table to prepare the paint. The table was approximately 30 to 32 inches high. When Petitioner lifted the bucket, he felt a pop in his right wrist. The paint bucket weighed 50 to 60 pounds. It was a 5 gallon enamel paint bucket depicted in Petitioner's

Exhibit 14, photo 20. Petitioner felt a sharp pop and pain in his wrist that was different than before the accident. Petitioner lifted the paint can every 3 to 4 weeks over the course of his job.

Petitioner had an appointment scheduled with Dr. Fernandez for January 24, 2024. Petitioner testified that he waited to see Dr. Fernandez until January 24, 2024 because the pain in his wrist made him think of his carpal tunnel syndrome. The area of his injury was close to the carpal tunnel surgery. Petitioner did not want to say that he hurt himself again if the pain was related to the carpal tunnel syndrome. He decided to wait and see what Dr. Fernandez said about the injury.

G. Medical Treatment Following the Accident of December 11, 2023

Petitioner had a follow up appointment with Dr. Fernandez scheduled for January 24, 2024 for carpal tunnel syndrome. (PX 3). He did not seek medical treatment for the work-related accident of December 11, 2024 earlier because he had the appointment and did not want to have to report a new accident if the right wrist injury was an aggravation of the carpal tunnel syndrome. On January 24, 2024, Dr. Fernandez noted a history that Petitioner was doing well related to the right carpal tunnel release, continued to have numbness and tingling on the left side and continued to work as a commercial painter. (PX 3). Dr. Fernandez documented that about 6 weeks ago, Petitioner was lifting a 5 gallon jug of paint and left a pop along the ulnar aspect of the right wrist and had been having ulnar sided wrist pain since the accident. (PX 3). Dr. Fernandez recommended a CT and MRI of the right wrist due to the work-related accident. (PX 3). Dr. Fernandez noted that Petitioner had findings consistent with an exacerbation of a pisotriquetral arthritis or a TFCC tear. (PX 3). He recommended the left sided carpal tunnel release. (PX 3). Petitioner testified that he asked Dr. Fernandez not to take him off work.

Petitioner underwent the CT scan of the right wrist on February 20, 2024 at Midwest Orthopedics at Rush. (PX 6). The CT revealed dorsal intercalated segment instability and early developing SLAC wrist with mild degeneration and small corticated ossicles along the dorsal margin of the scaphoid and ulnar styloid likely due to the sequela of a remote injury and mild base of the thumb degenerative changes. (PX 6).

Petitioner underwent the MRI study on February 20, 2024 at Midwest Orthopedics at Rush. (PX 7). The MRI revealed complete tear of the scapholunate ligament with dorsal tilting of the lunate in keeping with dorsal intercalated segment instability, bone marrow edema in the lunate, tear or avulsion of the TFCC ulnar styloid attachment, mild base of thumb of thumb degenerative changes and mild ECU tendinosis. (PX 7).

Petitioner had a follow up appointment with Dr. Fernandez on February 28, 2024. (PX 3). Dr. Fernandez noted that Petitioner continued to have right wrist pain following an injury lifting a 5 gallon jug of paint and feeling a pop with ulnar pain. (PX 3). He stated that Petitioner requested to continue working full duty and recommended medication, splinting and a bone scan. (PX 3). Dr. Fernandez stated that Petitioner had significant symptoms in both hands from the carpal tunnel syndrome and the new accident. (PX 3).

Petitioner underwent the bone scan on March 20, 2024 at Edwards Elmhurst Health. (PX 8). The bone scan revealed mildly asymmetric radiotracer activity within the right carpal bones compared to the left. (PX 8).

Petitioner was evaluated by Dr. Fernandez on April 25, 2024. (PX 3). Dr. Fernandez discussed treatment options with Petitioner, including a steroid injection and surgery. (PX 3). The surgery included a wrist arthroscopy and PIN resection or proximal row carpectomy. (PX 3). Petitioner underwent the injection. (PX 3). Dr. Fernandez recommended that Petitioner remain off work. (PX 3).

On May 31, 2024, Dr. Fernandez documented that Petitioner received 20% relief from the injection. (PX 3). Dr. Fernandez recommended waiting to see if the injection helped. (PX 3). Dr. Fernandez discussed surgical opinions for the right wrist. (PX 3). On June 21, 2024, Petitioner had a telehealth appointment with Dr. Fernandez. (PX 3). He recommended that Petitioner undergo a right wrist arthroscopy with PIN resection. (PX 3).

Petitioner was last evaluation by Dr. Fernandez on July 26, 2024. (PX 3). Dr. Fernandez set forth an assessment of bilateral hand numbness and tingling with onset due to work activities as a commercial painter and right wrist injury lifting a 5 gallon bucket of pain in December 11, 2023. (PX 3). Dr. Fernandez

continued to recommend the right wrist surgery. (PX 3). He set forth that Petitioner was unable to return to work. (PX 3).

On August 28, 2024, Dr. Fernandez prepared a work status note releasing Petitioner to return to work on September 3, 2024. (PX 3). Petitioner requested that Dr. Fernandez release him to return to work since Dr. Vender released him and he was not receiving temporary total disability benefits. Petitioner elected to return to work due to financial reasons.

Petitioner does not have any follow up appointments with Dr. Fernandez scheduled. He wanted to undergo the left carpal tunnel surgery by Dr. Fernandez. He has not undergone the recommended surgery.

H. Medical Opinions of Dr. Fernandez, Petitioner's Treating Physicians

Dr. Fernandez prepared a narrative report dated September 25, 2024. (PX 11). Dr. Fernandez set forth a diagnosis of scapholunate advanced collapse and likely triangular fibrocartilage tear and pisotriquetral degeneration. (PX 11). Petitioner had subjective complaints of pain, swelling and weakness affecting the right wrist and hand. (PX 11). The CT and MRI scan contained objective findings to support the diagnosis. (PX 11). Dr. Fernandez opined that the right wrist condition was related to the work accident of December 11, 2023. (PX 11). Dr. Fernandez noted that even if there were evidence of prior scapholunate ligament instability or degeneration, it was not clinically relevant or symptomatic. (PX 11). Petitioner sustained a sudden event after which there was evidence of progression or worsening of the symptoms seen on the CT and MRI scans compared to the previous x-rays. (PX 11). Further, the findings were consistent with the history of mechanisms of accident and current findings were worse than prior to the injury. (PX 11). Petitioner did not have clinical symptoms until the work accident of December 11, 2023 after which there was objective evidence of progression. (PX 11). There was clearly an aggravation of the radiographic findings from March 2023. (PX 11). Dr. Fernandez noted that scapholunate advance collapse or instability can be relatively stable and not clinically relevant and an injury or episode can add to the instability creating symptoms and the need for treatment. (PX 11). Petitioner had some underlying wear and tear of the wrist without symptoms or complaints and after the work injury developed clinical symptoms and the need for treatment, which is an aggravation of the preexisting condition. (PX 11).

Dr. Fernandez recommended an arthroscopy with debridement and resection of the posterior interosseous nerve and partial fusion or proximal row carpectomy or total fusion. (PX 11). The treatment options were reasonable and necessary and conventional. (PX 11). He found that the subjective complaints were consistent with the objective findings and that the treatment was reasonable and necessary. (PX 11). Dr. Fernandez stated that Petitioner could not return to full duty work. (PX 1). He disagreed with the opinions of Dr. Vender regarding causality. (PX 11). He disagreed that an arthroscopy with interosseous nerve resection was not recognized and conventional treatment for the condition especially if he was trying to avoid a partial fusion or carpectomy. (PX 11).

Dr. Fernandez stated that Petitioner did not report complaints of wrist pain on the right side consistent with a ligament injury, instability or a TFCC tear when he began treating Petitioner for carpal tunnel syndrome. (PX 11). He noted that the x-rays on March 30, 2023 showed minimal findings of SLAC compared to the CT and MRI scans. (PX 11). He stated that there was an objective worsening in appearance of SLAC since the most recent work injury. (PX 11). He set forth that the CT and MRI were consistent with a more acute injury. (PX 11).

Dr. Fernandez reviewed the report of Dr. Vender. (PX 11). Dr. Fernandez agreed that there was objective evidence of internal derangement and pathology of the wrist, which was causing Petitioner's symptoms. (PX 11). Dr. Fernandez reviewed the radiographs from March 30, 2023 and disagreed with Dr. Vender's reading of them. (PX 11). He stated that the extent and severity of the findings was not present at the time compared to the current findings following a new injury. (PX 11). Further, Petitioner did not have symptoms relating to the wrist until after December 11, 2023. (PX 11). Additionally, Petitioner was not receiving any medical treatment for the scapholunate advanced collapse or instability and was not symptomatic until after December 11, 2023. (PX 11).

Dr. Fernandez disagreed with Dr. Vender about the treatment plan. (PX 11). He stated that arthroscopies and resections are commonly performed and accepted treatment and normal treatment for this type of pathology. (PX 11). The arthroscopy would include debridement of the affected tissue including the TFCC tear revealed on the MRI and provide a better look to determine whether an proximal row

carpectomy or partial fusion or other surgery is reasonable. (PX 11). The posterior interosseous nerve resection was designed to avoid more significant operations. (PX 11). Dr. Vender considered the proximal carpectomy a "formidable procedure," which is why Dr. Fernandez offered a less formidable approach. (PX 11). Dr. Fernandez noted that Petitioner had not undergone any wrist treatment prior to December 11, 2023. (PX 11). Clearly, there was a new injury and new symptoms that required new treatment. (PX 11).

The evidence deposition of Dr. Fernandez was completed on March 31, 2025. (PX 12). Dr. Fernandez saw Petitioner for the accident of December 11, 2023 on January 24, 2024. (PX 12 at 10). He was also treating Petitioner for carpal tunnel syndrome. (PX 12 at 10). Petitioner provided a history that he was lifting a 5 gallon jug of paint and felt a pop along the ulnar aspect of his right wrist. (PX 12 at 11). Dr. Fernandez stated that the symptoms were different than the carpal tunnel complaints, including pain along the small finger side of the wrist. (PX 12 at 11).

The MRI revealed scapholunate collapse in the form of a complete tear of the scapholunate ligament with dorsal tilting of the lunate and evidence of a TFCC tear. (PX 12 at 14). The CT had similar findings. (PX 12 at 15). Dr. Fernandez recommended a bone scan to see if the problem was coming from the bone or blood supply and to rule out Kienbock's disease. (PX 12 at 16). Petitioner did not have Kienbock's disease. (PX 12 at 16).

Dr. Fernandez recommended that Petitioner undergo an arthroscopic debridement and PIN resection. (PX 12 at 20). He explained that the surgical procedure would not address the ligament, but would move the nerves to allow Petitioner to experience less pain. (PX 12 at 22). The arthroscopy would remove parts of the cartilage with wear and clean up the joint. (PX 12 at 23). Further, surgery could include the proximal row carpectomy, which would involve loss of range of motion in the wrist. (PX 12 at 23).

Dr. Fernandez set forth a diagnosis of scapholunate advance collapse and abnormal TFC or likely TFC tear. (PX 12 at 26-27). Petitioner had subjective complaints of pain, swelling, loss of motion and loss of strength. (PX 12 at 27). Petitioner had objective findings on the MRI, CT and bone scan. (PX 12 at 27). The subjective complaints were consistent with the objective findings. (PX 12 at 27).

Dr. Fernandez set forth that the scapholunate advanced collapse was work related. (PX 12 at 28). Petitioner did not have any symptoms prior to the accident, experienced a sudden event and temporally it was related. (PX 12 at 28). Dr. Fernandez noted some prior radiographic evidence of the scapholunate collapse and felt that it was stable until the work injury and then became unstable and required treatment. (PX 12 at 29). Dr. Fernandez explained that a 5 gallon bucket could weigh 50 pounds, which was a significant amount of force across the cartilage and scapholunate ligament. (PX 12 at 29-30). Dr. Fernandez recommended surgery in the form of a debridement with denervation or a salvage. (PX 12 at 31). He testified that the treatment was reasonable and necessary. (PX 12 at 31).

Dr. Fernandez reviewed the report of Dr. Vender. (PX 12 at 33). He agreed with the diagnosis, but disagreed regarding causation. (PX 12 at 33). Dr. Fernandez acknowledged that Petitioner had some evidence on the x-rays of scapholunate collapse. (PX 12 at 33). However, he testified that the new CT and MRI scans were significantly worse and some changes from the prior x-rays. (PX 12 at 34). Petitioner did not have any clinical symptoms per Dr. Vender who released him to return to work without restrictions from the carpal tunnel syndrome. (PX 12 at 34). Petitioner did not develop the symptoms of scapholunate advance collapse until after the work related accident. (PX 12 at 34). Dr. Fernandez noted that while the x-ray showed some findings, it did not mean that Petitioner had the condition since he did not have any complaints related to the scapholunate advanced collapse. (PX 12 at 35).

Dr. Fernandez disagreed with Dr. Vender in terms of treatment. (PX 12 at 35). Dr. Fernandez found the partial fusion or proximal row carpectomy to be reasonable, but stated that the debridement and denervation is a well-established, well described treatment for early scapholunate collapse. (PX 12 at 35). Dr. Fernandez did not want to perform a diagnostic arthroscopy, he wanted to debride the ligament. (PX 12 at 36). Dr. Fernandez set forth that the TFCC tear was a separate diagnosis. (PX 12 at 36). He did not know how much of Petitioner's symptoms were coming from the TFCC tear versus the scapholunate advanced collapse. (PX 12 at 36-37). Dr. Fernandez testified that the TFCC tear was part of the work injury. (PX 12 at 37).

Dr. Fernandez testified that Petitioner's right wrist symptoms did not exist prior to the work accident. (PX 12 at 38). He explained that both he and Dr. Vender saw Petitioner and did not see any symptoms related to scapholunate advanced collapse or TFCC pathology. (PX 12 at 38). Dr. Fernandez stated that the x-rays from March 2023 had subtle findings of scapholunate collapse, but it was at an early stage. (PX 12 at 41). It was early and often missed because Petitioner was not having symptoms in the area. (PX 12 at 41). Petitioner developed the symptoms after the accident. (PX 12 at 41). Dr. Fernandez stated that in March 2023, Petitioner was not symptomatic and in the early, pre-clinical stages, and after the accident the CT and MRI were worse than the x-ray and he had symptoms. (PX 12 at 42). The recommendation for surgery was causally related to the work-related accident of December 11, 2024. (PX 12 at 42).

Dr. Fernandez testified that the pop and ulnar sided pain was consistent with the TFCC tear and SLAC wrist. (PX 12 at 46-47). Dr. Fernandez testified that edema on the lunate in the MRI was an acute finding. (PX 12 at 54). Dr. Fernandez testified that the history of accident precludes a finding that the symptoms on December 11, 2023 were a natural progression of the scapholunate advance collapse. (PX 12 at 57). SLAC wrist is typically diagnosed based on the symptoms, then on x-ray, MRI or CT. (PX 12 at 62). Dr. Fernandez found it significant that Petitioner did not have any symptoms, experienced a sudden event that could cause the types of problems and then sought treatment. (PX 12 at 64). Dr. Fernandez explained that until a person experiences the symptoms, they do not have the condition. (PX 12 at 67). The x-rays of 2023 showed a widening of the scapholunate joint, not scapholunate advanced collapse since no treatment was required. (PX 12 at 67). He testified that the instant case was not a natural progression of pre-existing SCLA wrist since he was not having symptoms that occurred spontaneously or idiopathically on their own, they were brought on rapidly and suddenly by an event. (PX 12 at 68).

I. Medical Opinions of Dr. Vender, Respondent's Section 12 Physician

The evidence deposition of Dr. Vender was completed on June 6, 2025. (RX 7). Dr. Vender prepared a report dated July 8, 2024. (RX 7 at 8). He prepared a second report dated August 2, 2024. (RX 7 at 10). Dr. Vender documented a history that Petitioner was lifting a bucket of paint with both hands and felt a pop in his right wrist along the volar ulnar wrist. (RX 7 at 11). Petitioner had pain with extension and flexion,

tenderness to palpation on the volar ulnar wrist, and positive scaphoid test. (RX 7 at 12). The scaphoid test indicated scapholunate instability. (RX 7 at 14). The positive test indicated that Petitioner had clinically significant instability of the wrist. (RX 7 at 15). The bone scan revealed that the bones in the wrist were abnormal, which was consistent with scaphoid instability and early development of arthritis. (RX 7 at 16). Dr. Vender stated that the left wrist was normal and the right wrist had previous findings consistent with scapholunate instability. (RX 7 at 16). He stated that Petitioner had previous indications of scapholunate instability and associated symptoms. (RX 7 at 17). Dr. Vender stated that the MRI demonstrated abnormalities of the scapholunate ligament and questions of the TFCC. (RX 7 at 19). The CT revealed the same as the MRI. (RX 7 at 19).

Dr. Vender set forth a diagnosis of scapholunate instability with early degenerative changes. (RX 7 at 21). Dr. Vender stated that the condition was not related to the work accident since it was a longstanding preexisting condition. (RX 7 at 21). Dr. Vender stated that there was no accident since he was performing a routine activity, Petitioner used two hands to pick up something that he normally picks up and there was nothing remarkable about the activity. (RX 7 at 22). He stated the activity elicited symptoms from the pre-existing condition. (RX 7 at 23). The pop was part of the underlying condition and not an accident. (RX 7 at 23).

Dr. Vender testified that to fix the wrist condition, Petitioner required surgery. (RX 7 at 24). He stated that the condition was related to a longstanding preexisting condition. (RX 7 at 25). Dr. Vender stated that a diagnostic arthroscopy was not necessary since there was already a diagnosis. (RX 7 at 25). He felt that the MRI and CT did not add any additional information since the x-rays showed the condition. (RX 7 at 25). He stated that there was no therapeutic benefit to the arthroscopy. (RX 7 at 26). Dr. Vender questioned the efficacy of the posterior interosseous nerve resection. (RX 7 at 26). He would only do the resection if he was already in the wrist. (RX 7 at 26). Dr. Vender would recommend a proximal row carpectomy or excision of the scaphoid. (RX 7 at 27). The need for surgery was not related to the accident. (RX 7 at 27). He stated that Petitioner could perform his job without restrictions. (RX 7 at 27). He did not think that the symptoms were coming from the TFCC. (RX 7 at 28). Dr. Vender did not consider that Petitioner had a

work injury so he could not determine maximum medical improvement. (RX 7 at 28). Dr. Vender stated that Petitioner did not have a new condition in his wrist. (RX 7 at 28). Rather, Petitioner had a manifestation of a preexisting condition. (RX 7 at 29).

Dr. Vender stated that Petitioner may have sustained a strain to his wrist. (RX 7 at 31). The scapholunate instability was basically the same as scapholunate collapse. (RX 7 at 33). Dr. Vender stated that he did not need to see the ligaments because the x-ray showed that they were not working. (RX 7 at 34). He stated that cartilage damage could be seen on the x-ray and possibly MRI. (RX 7 at 34). The MRI would visualize the TFCC. (RX 7 at 34). He did not see a TFCC tear. (RX 7 at 35). A TFCC tear would have pain in the ulnar aspect of the wrist and clicking. (RX 7 at 35). Scapholunate instability would cause generalized wrist pain. (RX 7 at 35).

Dr. Vender stated that he did not discuss any symptoms related to the ulnar aspect of the wrist because it was different than the carpal tunnel symptoms. (RX 7 at 35). Dr. Vender stated that he did not believe that he saw a difference in the x-rays from March of 2023 and July 8, 2024; however, he did not mention the comparison in his reports. (RX 7 at 36). Petitioner's first complaints of pain in the volar ulnar side of the wrist to him were in July 2024. (RX 7 at 36-37). Dr. Vender did not recall if there was any indication in Dr. Fernandez's records that Petitioner had ulnar sided wrist pain prior to December 11, 2023. (RX 7 at 37).

Prior to July 8, 2024, Dr. Vender did not perform a scaphoid stress test. (RX 7 at 37). He performed the test because Petitioner was complaining of wrist pain. (RX 7 at 37). He did not perform the test earlier because it was not part of the carpal tunnel examination. (RX 7 at 37). Dr. Vender stated that if Petitioner had complained of wrist pain, he would have performed the scaphoid stress test. (RX 7 at 37). He set forth that scapholunate instability can be asymptomatic. (RX 7 at 38). It could become symptomatic with trauma. (RX 7 at 38). Dr. Vender stated that if symptoms start it is an elicitation of symptoms, not an aggravation. (RX 7 at 39). Dr. Vender was not aware of any symptoms in the wrist at his March 2023 examination. (RX 7 at 39). Petitioner had not sought treatment for the wrist. (RX 7 at 39).

Dr. Vender acknowledged that Petitioner reported lifting a can of paint. (RX 7 at 42). He did not know how heavy the paint can was. (RX 7 at 43). He stated that how heavy the paint can was would not affect his opinion regarding causation because Petitioner was using two hands and knew how heavy the paint can was and lifts it all the time. (RX 7 at 43). Dr. Vender acknowledged that the first time Petitioner experienced any symptoms in his right wrist was after he lifted the paint can. (RX 7 at 43). He stated that if Petitioner's symptoms continued, Petitioner would require medical treatment. (RX 7at 43).

J. Return to work Following the December 11, 2023 Accident

Following the work-related accident of December 11, 2023, Petitioner returned to work for Respondent on September 4, 2024. Petitioner returned to work as a painter for Respondent. Petitioner returned to work due to financial reasons since he was released by Dr. Vender. Petitioner had to work to pay his bills. While working, Petitioner experienced pain in his hands and numbness and tingling in his left hand. Petitioner is still working for Respondent.

K. Current Complaints

Petitioner testified regarding his subjective complaints. Petitioner experiences pain in his right wrist and it hurts all day. Petitioner has difficulty sleeping. Petitioner uses a brace or "widget" for his right wrist.

III. Conclusions of Law

In support of the Arbitrator's decision relating to "C," did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on December 11, 2023. In support of the decision, the Arbitrator relies on Petitioner's credible and unrebutted testimony and the medical records admitted into evidence.

The Arbitrator finds that Petitioner has met his burden of proof and has established that he sustained accidental injuries arising out of and in the course of his employment. An injury occurs in the course of the employment when the injury occurs at a place where the claimant might have reasonably been performing his job duties and while the claimant was at work. *Caterpillar Tractor Company v. Indus. Com'n*, 129 Ill.2d 52, 541 N.E.2d 655 (1989). "For an injury to arise out of one's employment, it must

have an origin and some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the injury." *Lakeside Architectural Metals v. Industrial Commission,* 267 Ill.App.3d 1058, 642 N.E.2d 796 (1st Dist. 1994). Thus, to be covered, the employee must be exposed to a risk greater than that of the general public if they are not subjected to a risk directly related to employment. *Caterpillar Tractor Company*, 129 Ill.2d 52.

A neutral risk is a risk that the general public is equally exposed to. *Id.* Where there is a neutral risk, the employee must be exposed to a risk greater than that of the general public for the accident to be compensable. *Caterpillar Tractor Company*, 129 Ill.2d 52. "If the risk of hazard is so increased by employment, it does not matter that the injury is unusual or unexpected, or that it is not particular to the employment." *Bommarito v. Industrial Commission*, 82 Ill.2d 191, 412 N.E.2d 548 (1980), citing *C.A. Dunham Co. v. Industrial Commission*, 16 Ill.2d 102, 156 N.E.2d 560 (1959). An employee can show an increased risk quantitatively or qualitatively. *Adcock v. Illinois Workers' Compensation Commission*, 2015 IL App (2d) 130884WC, 38 N.E.3d 587 (2d Dist. 2015).

"The phrase arising out of refers to a causal connection between the employment and the accidental injury and is satisfied when a claimant establishes that the accident has some origin in a risk connected with or incidental to the employment. *Young v. Illinois Workers' Compensation Com'n*, 383 Ill.Dec. 131, 13 N.E.2d 1852 (4th Dist. 2014). An injury arises out of employment if at the time of the occurrence, the claimant was performing acts he was instructed to perform by his employer or acts which he could reasonably be expected to perform incident to his assigned duties. *Id.* An accident arises out of employment where the accident belongs to or is connected with what an employee has to do to fulfill his duties. *Id.* The court specifically stated that "when a claimant is injured due to an employment-related risk – a risk distinctly associated with his or her employment – it is unnecessary to perform a neutral risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public." *Id.*

The court in *McAllister v. Illinois Workers' Compensation Commission* pointed out that "to satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the

employment so as to create a causal connection between the employment and the accidental injury." 2020 IL 124848 (2020). In determining if the injuries arose out of an employment related risk, under the analysis in Illinois, it is necessary to determine if the risk is "distinctly associated with the claimant's employment." *Steak 'n Shake v. Illinois Workers' Compensation Commission*, 2016 Il App (3d) 150500WC, 359 N.E. 3d 571 (3d Dist. 2016) (claimant sustained injury while drying tables in restaurant). A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Caterpillar Tractor v. Industrial Commission*, 129 Ill 2d 52, 541 N.E.2d 665 (1989). "The words 'in the course of the employment' refer to time, place and circumstances under which the accident occurred." *Chmelik v. Vana*, 31 Ill.2d 272, 201 N.E.2d 434 (1964).

The Arbitrator finds that the accident of December 11, 2023 arose out of Petitioner's employment since the accident was distinctly associated with Petitioner's employment. Petitioner sustained an injury to his right wrist when he lifted a 5 gallon, 50 to 60 pound, bucket of paint onto a 30 to 32 inch table. Petitioner felt a pop in his right wrist when he lifted the bucket of paint. The bucket of paint is depicted in Petitioner's Exhibit 14, picture 20. Petitioner was employed as a painter for Respondent. His job duties included painting and cleaning cabinets. He mixed paint every 3 to 4 weeks. Mixing paint was part of his job duties and required for him to paint. Petitioner was working in his assigned duties performing a task directly related to his employment and in the furtherance of his employment. Accordingly, Petitioner sustained an accidental injury arising out of his employment.

Although the Arbitrator found that Petitioner's accident was directly related to his employment, he also finds that Petitioner was subject to a risk greater than the general public when he sustained the accident. Petitioner was lifting a 60 pound, 5 gallon bucket of paint onto a table. The 5 gallon bucket was clearly larger than the paint cans used at home. The Arbitrator notes that the bucket, as depicted in Petitioner's Exhibit 14, is very large and for industrial use. Petitioner has to lift the bucket onto a table a least once a

month over more than 20 years. Accordingly, Petitioner was subjected to risks of his employment to a greater degree than the general public.

The Arbitrator finds that Petitioner was in the course of his employment when he sustained injuries. Petitioner was at work, performing his work duties, when he sustained the accident. Accordingly, he was in the course of his employment.

The Arbitrator notes that Petitioner's first appointment for the right wrist injury was January 24, 2024. Dr. Fernandez documented that Petitioner sustained a new accident to his right wrist when he went to pick up a 5 gallon jug of paint. Thus, the medical records corroborate Petitioner's testimony.

Respondent did not offer any evidence to rebut Petitioner's testimony. Respondent's only defense is that Petitioner did not seek medical treatment until January 24, 2024. However, Petitioner explained why he waited until January 24, 2024 to be examined by his doctor. He had a follow up appointment for the carpal tunnel surgery scheduled for January 24, 2024. He knew he was going to see the doctor shortly. Further, the pop in his hand was very close to the location of the carpal tunnel, as confirmed by Dr. Fernandez. Petitioner did not want to make a new claim if this was an aggravation of the carpal tunnel surgery. He wanted to make sure that there was a new injury to his wrist before opening another claim. The Arbitrator finds Petitioner's explanation to be credible and reasonable.

Dr. Vender stated that there was no accident since Petitioner was performing a routine activity, Petitioner used two hands to pick up something that he normally picks up and there was nothing remarkable about the activity. The Arbitrator rejects Dr. Vender's opinion that Petitioner did not sustain an accidental injury. First, it is the Arbitrator, not the doctors, job to determine whether Petitioner sustained an accidental injury arising out of and in the course of his employment. Petitioner has established that the accident arose out of and in the course of his employment. Second, Dr. Vender clearly underestimated what Petitioner was lifting. Petitioner was lifting a 5 gallon bucket of paint, which weighed 50 to 60 pounds. Dr. Vender admitted that he did not know how heavy the paint bucket was. Further, he stated that this is a normal activity that Petitioner was ready for and he used both hands. The Arbitrator finds this argument ridiculous. If lifting a heavy object did not constitute an accident because the person lifting normally picked it up, there

would be no accidents. Additionally, it appears that Dr. Vender was picturing a paint can, not an industrial bucket. Accordingly, the Arbitrator rejects Dr. Vender's opinions since Petitioner was lifting a 60 pound industrial paint bucket as part of his job duties as a painter for Respondent.

Based on the unrebutted testimony of Petitioner corroborated by the medical records, the Arbitrator finds that Petitioner has established that he sustained accidental injuries arising out of and in the course of his employment.

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

The Arbitrator concludes that Petitioner's current condition of ill-being in connection with his right wrist, including the scapholunate advanced collapse and TFCC tear, was causally connected to the work-related accident of December 11, 2023. The Arbitrator relies on the credible and unrebutted testimony of Petitioner, the medical records admitted into evidence and the medical opinions of Dr. Fernandez, Petitioner's treating physician. *See International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the claimant's treating physicians). The accident "need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 797 N.E.2d 665 (2003) (emphasis in original). The Arbitrator considered the opinions of Dr. Vender the Section 12 physician, and accorded them little weight since Petitioner sustained a new accident to his right wrist and was asymptomatic prior to the accident.

A. Medical Opinions of Dr. Fernandez

Petitioner established medical causation of the right wrist through the medical opinions of Dr. Fernandez. Dr. Fernandez set forth a diagnosis of scapholunate advanced collapse and likely triangular fibrocartilage tear and pisotriquetral degeneration. Dr. Fernandez opined that the right wrist condition was related to the work accident of December 11, 2023. Dr. Fernandez noted that even if there were evidence of prior scapholunate ligament instability or degeneration, it was not clinically relevant or symptomatic. Petitioner did not have any symptoms prior to the accident, experienced a sudden event and temporally it

was related. Petitioner sustained a sudden event after which there was evidence of progression or worsening of the symptoms seen on the CT and MRI scans compared to the previous x-rays. Dr. Fernandez noted some prior radiographic evidence of the scapholunate collapse and felt that it was stable until the work injury and then became unstable and required treatment. Dr. Fernandez explained that a 5 gallon bucket could weigh 50 pounds, which was a significant amount of force across the cartilage and scapholunate ligament.

Further, the objective findings were consistent with the history of mechanisms of accident and current findings were worse than prior to the injury. Petitioner did not have clinical symptoms until the work accident of December 11, 2023 after which there was objective evidence of progression. There was clearly an aggravation of the radiographic findings from March 2023. Dr. Fernandez noted that scapholunate advance collapse or instability can be relatively stable and not clinically relevant and an injury or episode can add to the instability creating symptoms and the need for treatment. Petitioner had some underlying wear and tear of the wrist without symptoms or complaints and after the work injury developed clinical symptoms and the need for treatment, which is an aggravation of the preexisting condition.

Dr. Fernandez testified that Petitioner's right wrist symptoms did not exist prior to the work accident. He explained that he saw Petitioner and did not see any symptoms related to scapholunate advanced collapse or TFCC pathology. Dr. Fernandez stated that the x-rays from March 2023 had subtle findings of scapholunate collapse, but it was at an early stage. It was early and often missed because Petitioner was not having symptoms in the area. Petitioner developed the symptoms after the accident. Dr. Fernandez stated that in March 2023, Petitioner was not symptomatic and in the early, pre-clinical stages, and after the accident the CT and MRI were worse than the x-ray and he had symptoms.

Dr. Fernandez testified that the pop and ulnar sided pain was consistent with the TFCC tear and SLAC wrist. Dr. Fernandez testified that edema on the lunate on the MRI was an acute finding. Dr. Fernandez testified that the history of accident precluded a finding that the symptoms on December 11, 2023 were a natural progression of the scapholunate advance collapse. SLAC wrist is typically diagnosed based on the symptoms, then on x-ray, MRI or CT. Dr. Fernandez found it significant that Petitioner did not have any

symptoms, experienced a sudden event that could cause the types of problems and then sought treatment. Dr. Fernandez explained that until a person experiences the symptoms, they do not have the condition. The x-rays of 2023 show a widening of the scapholunate joint, not scapholunate advanced collapse since no treatment was required. He testified that the instant case was not a natural progression of pre-existing SLAC wrist since he was not having symptoms that occurred spontaneously or idiopathically on their own, they were brought on rapidly and suddenly by an event.

The Arbitrator finds it significant that Petitioner was examined multiple times prior to December 11, 2023 by Dr. Fernandez and Dr. Vender and did not have any right wrist pain or symptoms associated with scapholunate advanced collapse. Dr. Fernandez examined Petitioner in October 2023 and he did not have any evidence of right wrist pain. Further, while Petitioner had evidence of widening of the scapholunate joint in x-rays from March of 2023, he did not have any symptoms of scapholunate advanced collapse. Dr. Fernandez credibly testified that the objective findings were worse following the accident of December 11, 2023. Since Dr. Fernandez's testimony is consistent with the facts of the case, the medical records and Petitioner's testimony, the Arbitrator finds his testimony to be persuasive.

In according greater weight to the medical opinions of Dr. Fernandez, Petitioner's treating physicians, the Arbitrator relies on *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the petitioner's treating physicians). The Arbitrator also finds that the opinions of Dr. Fernandez were supported by the objective evidence and medical records. Accordingly, the Arbitrator finds that Petitioner's current condition in connection with his right wrist was causally connected to the work-related accident of December 11, 2023.

B. Chain of Events Analysis

The Arbitrator concludes that Petitioner established that the current condition of his right wrist was causally connected to the work-related accident of December 11, 2023 through the "chain of events" analysis. Proof of prior good health and change immediately following and continuing after an injury may

establish that the impaired condition was due to injury. *Ill. Power Co. v. Indus. Com'n*, 176 Ill.App.3d 317, 530 N.E.2d 617 (4th Dist. 1988).

In the instant case, Petitioner testified that prior to February 6, 2023, he never sustained any injuries involving his right hand. Petitioner received medical treatment for carpal tunnel syndrome. During his medical treatment with Dr. Fernandez for the carpal tunnel syndrome, he did not complaint of right wrist symptoms. He testified that between February 6, 2023 and December 11, 2023 he did not sustained any new accidents involving his right wrist. As of October 11, 2023, the medical records confirm that Petitioner was not complaining of right wrist pain. Accordingly, the Arbitrator finds that Petitioner was in good health regarding the right wrist and had no symptoms associated with the right wrist prior to December 11, 2023.

Immediately following the work-related accident of December 11, 2023, Petitioner began experiencing symptoms in his right wrist. Petitioner had a pre-scheduled follow up appointment for the carpal tunnel syndrome scheduled for January 24, 2024. He elected to wait until that appointment to seek medical treatment since he did not know if he sustained a new injury or an aggravation of the carpal tunnel syndrome. On January 24, 2024, Dr. Fernandez, for the first time, documented right sided wrist pain and ulnar pain. Petitioner has been under a continuous course of medical care for the right wrist including follow up appointments, diagnostic testing, activity modification and a recommendation for surgery.

The Arbitrator finds that a delay in reporting the left shoulder condition can be causally related to the work accident when Petitioner is able to offer a credible explanation for the delay. *See Hill v. Salvation Army*, 02IIC0648, 2002 WL 31246744 (IIC Aug. 9, 2002). The Arbitrator finds that in the instant case, Petitioner intended to seek medical treatment at his pre-scheduled appointment for his carpal tunnel syndrome and wanted to confirm that he sustained a new injury before pursing a new claim. The Arbitrator finds Petitioner's explanation reasonable and credible.

Accordingly, the Arbitrator finds that the work-related accident of December 11, 2023 caused Petitioner's current condition of ill-being as it his right wrist since he was in good health prior to the accident and immediate sought medical care for ongoing symptoms following the accident.

C. Medical Opinions of Dr. Vender, Respondent's Section 12 Physicians

The Arbitrator considered the opinions of Dr. Vender, Respondent's Section 12 physician, and accorded them little weight. *See International Vermiculite Company,* 77 Ill.2d 1. The Arbitrator finds it significant that Dr. Vender discounted Petitioner's history of the accident, underestimated how heavy the bucket of paint was, admitted that lifting the bucket elicited symptoms in Petitioner's right wrist, failed to document that the pre-existing x-ray findings remained the same and dismissed the use of and MRI or CT to evaluate any additional ligament damage to Petitioner's right wrist. Accordingly, the Arbitrator accords the opinions of Dr. Vender little weight.

Dr. Vender documented a history that Petitioner was lifting a bucket of paint with both hands and felt a pop in his right wrist along the volar ulnar wrist. Dr. Vender set forth a diagnosis of scapholunate instability with early degenerative changes. Dr. Vender stated that the condition was not related to the work accident since it was a longstanding preexisting condition. Dr. Vender stated that there was no accident since Petitioner was performing a routine activity, Petitioner used two hands to pick up something that he normally picks up and there was nothing remarkable about the activity. He confirmed that the activity elicited symptoms from the pre-existing condition. Dr. Vender stated that he did not need to see the ligaments because the x-ray showed that they were not working. He stated that cartilage damage could be seen on the x-ray and possibly MRI. The MRI would visualize the TFCC. He did not see a TFCC tear.

Dr. Vender stated that he did not discuss any symptoms related to the ulnar aspect of the wrist because it was different than the carpal tunnel symptoms. Dr. Vender stated that he did not believe that he saw a difference in the x-rays from March of 2023 and July 8, 2024; however, he did not mention the comparison in his reports. Petitioner's first complaints of pain in the volar ulnar side of the wrist to Dr. Vender were in July 2024. Dr. Vender did not recall if there was any indication in Dr. Fernandez' records that Petitioner had ulnar sided wrist pain prior to December 11, 2023.

Prior to July 8, 2024, Dr. Vender did not perform a scaphoid stress test. He did not perform the test earlier because it was not part of the carpal tunnel examination. Dr. Vender stated that if Petitioner had complained of wrist pain, he would have performed the scaphoid stress test. He set forth that scapholunate

instability can be asymptomatic. It could become symptomatic with trauma. Dr. Vender stated that if symptoms start it is an elicitation of symptoms, not an aggravation. Dr. Vender was not aware of any symptoms in the wrist at his March 2023 examination. Petitioner had not sought treatment for the wrist prior to December 11, 2023.

Dr. Vender acknowledged that Petitioner reported lifting a can of paint. He did not know how heavy the paint can was. He stated that how heavy the paint can was would not affect his opinion regarding causation because Petitioner was using two hands and knew how heavy the paint can was and lifts it all the time. Dr. Vender acknowledged that the first time Petitioner experienced any symptoms in his right wrist was after he lifted the paint can.

Dr. Fernandez reviewed the report of Dr. Vender. Dr. Fernandez reviewed the radiographs from March 30, 2023 and disagreed with Dr. Vender's reading of them. He stated that the extent and severity of the findings was not present at the time compared to the current findings following a new injury. Dr. Fernandez acknowledged that Petitioner had some evidence on the x-rays of scapholunate collapse. However, he testified that the new CT and MRI scans are significantly worse and some changes from the prior x-rays. Petitioner did not have any clinical symptoms per Dr. Vender who released him to return to work without restrictions from the carpal tunnel syndrome. Petitioner did not develop the symptoms of scapholunate advance collapse until after the work related accident. Dr. Fernandez noted that while the x-ray showed some findings, it did not mean that Petitioner had the condition. Moreover, Petitioner did not have symptoms relating to the wrist until after December 11, 2023. Additionally, Petitioner was not receiving any medical treatment for the scapholunate advanced collapse of instability and was not symptomatic until after December 11, 2023. Dr. Fernandez noted that Petitioner had not undergone any wrist treatment prior to December 11, 2023. Clearly, there was a new injury and new symptoms that required new treatment.

The Arbitrator reviewed the opinions of Dr. Vender and rejects them. First, Dr. Vender stated that Petitioner did not have an accident since he lifting the paint can was unremarkable, normal and he used two hands. The Arbitrator notes that it is his job and not the job of Dr. Vender to determine whether Petitioner sustained a compensable accident. Further, Dr. Vender clearly did not understand that Petitioner was lifting

a 5 gallon, 50 to 60 pound bucket of industrial paint onto a table. This was not an ordinary paint can used at home. Moreover, since it weighed 60 pounds, Petitioner had to use two hands to lift it. It is impossible to lift the bucket with one hand. It is significant that Dr. Vender admitted that lifting the bucket of paint caused Petitioner to experience symptoms and caused a pop in his right wrist. He also stated that the accident manifested Petitioner's symptoms.

The Arbitrator also finds it problematic that Dr. Vender believed that no additional information could be gained from an MRI or CT scan. The x-rays did not visualize the ligaments or cartilage in the wrist. The MRI and CT indicated the extent of damage in the wrist and TFCC pathology. Dr. Vender denies that the TFCC was damaged. However, his opinions are contradicted by the MRI report and the opinions of Dr. Fernandez. The Arbitrator finds that the objective diagnostic testing supports the findings of Dr. Fernandez.

The Arbitrator finds it significant that Petitioner did not have any symptoms in his right wrist prior to December 11, 2023. Petitioner was under the active treatment of Dr. Fernandez, a highly qualified hand surgeon, for carpal tunnel syndrome. He was last examined by Dr. Fernandez on October 11, 2023. Petitioner was also examined by Dr. Vender on two occasions in 2023. Neither hand surgeon documented any right wrist or ulnar complaints during the course of Petitioner's treatment for carpal tunnel syndrome. Dr. Fernandez testified that the pain would have been close to the carpal tunnel making it ever more likely that any complaints of pain would have been documented. If Petitioner was having wrist symptoms they would have been documented in the medical records. Accordingly, it is clear that Petitioner did not have any right wrist complaints prior to December 11, 2023.

Dr. Vender relied heavily on the x-ray findings from March 2023, which revealed a widening of the scapholunate. He testified that this was evidence that Petitioner's condition was pre-existing. However, Dr. Vender admitted that Petitioner did not have symptoms associated with the wrist in March 2023. Further, he testified that he did not believe that the findings on the x-ray changed from March 2023 to July 2024. However, he failed to document his findings in his report. Whereas, Dr. Fernandez documented that he reviewed the March 2023 x-rays and compared them to the findings on the MRI and CT. He stated that the condition had become worse since the March 2023 x-rays. Dr. Fernandez also stated that the findings

in 2023 were not clinically significant since Petitioner did not have any associated symptoms and the condition was extremely mild. The Arbitrator finds the opinions of Dr. Fernandez to be more persuasive than those of Dr. Vender since Dr. Fernandez documented his findings in his report and Dr. Vender did not. Additionally, Dr. Fernandez looked that the totality of evidence and found that since Petitioner did not have symptoms, the findings on the x-ray were not clinically significant.

Lastly, the Arbitrator finds it significant that Dr. Vender did not perform the scaphoid stress test until July 2024. Dr. Vender admitted that if Petitioner experienced wrist pain then he would have performed the test. This corroborate the fact that Petitioner did not have right wrist pain on any of his prior examinations.

The Arbitrator finds the opinions of Dr. Fernandez to be more persuasive than those of Dr. Vender based on the medical records, testimony of Petitioner and pictures admitted into evidence. Accordingly, the Arbitrator finds that Petitioner's right wrist condition was causally connected to the work-related accident of December 11, 2023.

In support of the Arbitrator's decision relating to "K," prospective medical care, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment for the medical treatment recommended by his treating physician, Dr. Fernandez, including the right wrist surgery. In support of this finding, the Arbitrator relies on Petitioner's credible and unrebutted testimony, the medical records admitted into evidence and the opinions of Dr. Fernandez. Having found that Petitioner sustained a compensable accident and that the current condition of ill-being in connection with the right wrist was causally connected to the work-related accident of December 11, 2023, the Arbitrator awards payment for the medical treatment recommended by Dr. Fernandez.

Dr. Fernandez recommended that Petitioner undergo an arthroscopic debridement and PIN resection. He explained that the surgical procedure would not address the ligament problem, but would move the nerves to allow Petitioner to experience less pain. The arthroscopy would remove parts of the cartilage with wear and clean up the joint. Further, surgery could include the proximal row carpectomy, which would involve loss of range of motion in the wrist.

Dr. Vender testified that to fix the wrist condition, Petitioner required surgery. He stated that there was no therapeutic benefit to the arthroscopy. He also questioned the efficacy of the posterior interosseous nerve resection. Dr. Vender would recommend a proximal row carpectomy or excision of the scaphoid.

Dr. Fernandez disagreed with Dr. Vender in terms of medical treatment. He disagreed that an arthroscopy with interosseous nerve resection was not recognized and conventional treatment for the condition especially if he was trying to avoid a partial fusion or carpectomy. Dr. Fernandez found the partial fusion or proximal row carpectomy to be reasonable, but the debridement and denervation is a well-established, well described treatment for early scapholunate collapse. Dr. Fernandez did not want to perform a diagnostic arthroscopy, he wanted to debride the ligament.

It is significant that Dr. Vender agreed that Petitioner required surgery. However, the Arbitrator finds the treatment plan of Dr. Fernandez to be more reasonable than that of Dr. Vender. Dr. Fernandez has recommended the less "formidable" treatment. He was trying to avoid a salvage operation and preserve range of motion in Petitioner's wrist by not performing the proximal carpectomy. Dr. Fernandez wanted to treat the condition without compromising range of motion and jumping to the more extreme surgery. Further, he recommended the arthroscopy to debride the ligament and TFCC. Dr. Vender failed to understand the purpose of the recommendation. The scaphoid ligament and TFCC pathology was confirmed in the MRI study. Accordingly, the Arbitrator awards payment for the surgical procedure recommended by Dr. Fernandez.

Lastly, the Arbitrator finds that Respondent failed to submit the recommended surgery through Utilization Review. Section 8.7(3) of the Act states that:

> 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 the medical treatment is excessive in compliance with an accredited utilization review program under this Section. 820 ILCS 305/8.7(3).

Instead of submitting the recommended surgery through Utilization Review, the employer requested that Petitioner be examined by Dr. Vender pursuant to Section 12 of the Act. Section 12 states that:

> An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly

> qualified medical practitioner or surgeon selected by the employer, at any time and place reasonably convenient for the employee, either within or without the State of Illinois, for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provision of the Act. 820 ILCS 305/12.

Reading the Act as a whole and relying on the plain language of the Act, Respondent can only deny payment for medical treatment based on Utilization Review. Since Respondent did not submit the medical treatment through Utilization Review, it does not have a basis under the Act to deny payment for the recommended treatment. The opinions of Dr. Vender should not be considered in connection with payment for the recommended surgery based on Section 8.7 of the Act. In support of this decision, the Arbitrator relies on *Parisi v. GEM Construction Company*, 13 IWCC 0489, 2013 WL 3381140 (IWCC May 3, 2013) (holding that the claimant was entitled to payment for a work conditioning program based on the employer's failure to obtain a Utilization Review that found the program to be non-certified).

Based on the medical records and opinions of Dr. Fernandez, the Arbitrator awards Petitioner payment for the medical treatment, including right wrist surgery. In support of her decision, the Arbitrator cites *Plantation Manufacturing Company v. Industrial Commission*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2d Dist. 1997).

In support of the Arbitrator's decision relating to "K," temporary total disability, the Arbitrator makes the following conclusions:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from April 25, 2024 through September 3, 2024. The Arbitrator relies on Petitioner's credible testimony, the medical records admitted into evidence and the medical opinions of Dr. Fernandez. Respondent's defense to payment of temporary total disability benefits was accident and causation. Having found that Petitioner sustained a compensable accident and that the right wrist condition was causally connected to the work-related accident, the Arbitrator awards payment of temporary total disability benefits from April 25, 2024 through September 3, 2024.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary

and has not reached a permanent condition.'" (quoting *Manis v. Industrial Commission*, 172 Ill.Dec. 95, 595 N.E.2d 158 (1st Dist. 1992)). The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* In *Freeman United Coal Mining Company*, the court held that the condition of the claimant's knee had not stabilized and that the petitioner was thus entitled to TTD benefits. *Id.* The court based its decision on the fact that the claimant had not been released to full-duty work and future medical care was being considered by the claimant's treating physicians. *Id.*

The medical records admitted into evidence established that Petitioner was under active medical are and unable to return to work for the period of April 25, 2024 through September 3, 2024. Petitioner was under the active medical care of Dr. Fernandez. On April 25, 2024, Dr. Fernandez recommended that Petitioner remain off work and undergo surgery. Petitioner remained under the medical care of Dr. Fernandez from April 25, 2024 to September 3, 2024. On September 3, 2024, Dr. Fernandez released Petitioner to return to work due to financial reasons. Accordingly, Petitioner's condition had not stabilized and he was unable to work from April 25, 2024 through September 3, 2024. Based on the medical records of admitted at hearing, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from April 25, 2024 through September 3, 2024.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC052175
Case Name	Angela Blakes v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0300
Number of Pages of Decision	3
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Christopher Freeman
Respondent Attorney	Anne Zakrzewski

DATE FILED: 10/27/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGELA BLAKES,
Petitioner,

vs. NO: 07 WC 52175

CHICAGO TRANSIT AUTHORITY,
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 merits of the Arbitrator's denial of Petitioner's Motion to Reinstate, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 25, 2026 is hereby affirmed and adopted.

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

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

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

OCTOBER 27 2026

d: 10/22/26
CAH/tdm
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

Angela Blakes **Petitioner,**	)		
Petitioner,	)		
	)	Case No.:	07WC052175
v.	)	Setting:	Chicago
Chicago Transit Authority **Respondent,**	)		
Respondent.	)		

ORDER TO DENY MOTION FOR REINSTATEMENT OF CASE

After this case was filed by Petitioner and all parties received due notice, the Petitioner failed to appear on February 25, 2026, at 9:00 a.m. regarding Petitioner's Motion for Reinstatement of the Case. Accordingly, as provided by law and for the reasons set forth on the record, I hereby deny Petitioner's Motion for Reinstatement of the Case.

It is so ordered:

Elaine Llerena
Arbitrator

FEBRUARY 25 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC005249
Case Name	Jennifer Frazier v. State of Illinois
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0301
Number of Pages of Decision	10
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Brett Kolditz

DATE FILED: 10/27/2026

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JENNIFER FRAZIER,

Petitioner,

vs. NO: 25WC005249

STATE OF ILLINOIS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causal connection, medical benefits, and prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 1, 2026 is hereby affirmed and adopted.

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

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

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

OCTOBER 27 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 10/21/26
FJS/afr
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC005249
Case Name	Jennifer Frazier v. State of Illinois
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Peter Bobber
Respondent Attorney	Brett Kolditz

DATE FILED: 4/1/2026

/s/ Gerald Granada, Arbitrator
Signature

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

APRIL 1 2026

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF MARCH 31 2026 3.61%

26IWCC0301

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jennifer Frazier
Employee/Petitioner

v.

Illinois Attorney General's Office
Employer/Respondent

Case # **25** WC **005249**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Ottawa**, on **02/27/2026**. 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 **06/24/2024**, Petitioner did not sustain an accident that arose out of and in the course of employment.

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

The medical services provided were not reasonable and necessary to relieve a work-related injury.

Petitioner is not entitled to prospective medical treatment to relieve a work-related injury.

ORDER

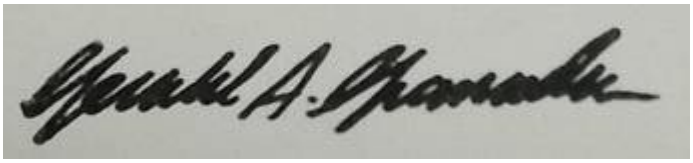
The Arbitrator finds that Petitioner did not sustain a repetitive trauma injury to both her hands arising out of and in the course of her employment by Respondent, which manifested itself on June 24, 2024, and her current condition of ill-being is not causally related to her work activities.

All claims for compensation in this matter are thus hereby denied. Respondent shall receive credit for all benefits paid.

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

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**

APRIL 1 2026

FINDINGS OF FACT

This case involves Petitioner Jennifer Frazier, who alleges to have sustained injuries while working for Respondent, Illinois Attorney General's Office on June 24, 2024. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) causation; and 3) prospective medical care.

Petitioner, Jennifer Frazier, has been employed by the Office of the Illinois Attorney General as a mediator in the Health Care Bureau since August 2018. Her role is a full-time, 40-hour-per-week position that is primarily sedentary. Her duties involve performing informal mediations via computer and telephone daily, which include overseeing and receiving complaints and contacting providers and consumers. Petitioner is left-hand dominant, has a master's degree plus doctoral hours, and has formal training in typing.

Petitioner alleges a repetitive trauma injury to her bilateral hands and wrists arising from her work activities, specifically prolonged typing on her work-issued laptop. Petitioner testified that in March, 2020, her job changed because of COVID, and she began to work from home and began using a laptop. She used the laptop on her kitchen table. She reported that resting her wrists on the edge of the table or laptop while working led to pain, swelling, numbness, and tingling. Petitioner testified she works an 8-hour workday which included one hour for breaks and lunch. Her job required her to actively brainstorm and research to identify how best to mediate each consumer complaint. When communicating, she utilized the laptop 80 to 85 percent of the time and used her phone 15 to 20 percent of the time. In 2021, Petitioner developed a lump on her right wrist and began noticing problems with her fingers that developed over time. She began experiencing numbess and tingling.

Medical History

Petitioner was first examined on June 24, 2024 by Dr. Greg Fenton at Rush Neurology for numbness and pain in her fingers. Dr. Fenton noted positive Tinel and Phalen tests on the left hand. He diagnosed Petitioner with left carpal tunnel syndrome and recommended bilateral bracing while sleeping and typing. Petitioner was next seen for her annual physical with Dr. Farah Malik on July 18, 2024. Regarding the hands, she provided a history of bilateral carpal tunnel syndrome with pain and swelling of the right wrist with ganglion cyst. Dr. Malik recommended Petitioner follow Dr. Fenton's prescribed treatment and obtain an EMG/NCV.

On July 18, 2024, Petitioner completed an Accommodation Medical Assessment Form in which she indicated a chronic impairment that resulted in pain with prolonged sitting, standing, walking and continued typing. (PX 1, p.5-7) She requested allowance to work from home, use wrist splints, speak to type, an ergonomic keyboard, and the ability to get up for a few moments every half hour. (PX. 1, p. 7) Petitioner testified that she sometimes wears a wrist brace on both hands, but she does not use the keyboard and mouse that was offered to her.

On August 14, 2024 an EMG/NCV study was performed showing bilateral median mononeuropathies at the wrist of moderate severity, worse on the left than the right. Petitioner followed up with Dr. Fernandez at Midwest Orthopaedics at Rush and received a left wrist carpal tunnel steroid injection. An MRI of the right wrist was ordered for November 25, 2024, which was unremarkable, but showed a benign intraosseous ganglion cyst. Dr. Fernandez administered a right wrist carpal tunnel steroid injection on January 22, 2025. On February 24, 2025, Petitioner followed up with Dr. Fernandez and indicated the injections only provided temporary relief. Dr. Fernandez recommended bilateral carpal tunnel release surgery as the next step.

Prior to June 24, 2024, Petitioner was treated for bilateral wrist pain and paresthesia following a hysterectomy in November 2023. The records indicate the IV placement from the surgery caused new sensations in her hands, however some symptoms existed previously. She noted difficulty performing work-related activities including typing and difficulty with functional tasks including cooking, braiding her hair, and showering. She completed five sessions of physical therapy and was discharged on February 6, 2024 with intermittent paresthesia.

Deposition of Dr. Michael Vender

Petitioner was examined, pursuant to Section 12, by Dr. Vender on February 19, 2025. Dr. Vender noted a history of prior right index finger treatment and abnormal sensation in her right and left hands following IV placement in November 2023. Based on the medical records and Petitioner's statements, Dr. Vender was unable to pinpoint exactly when the symptoms began. Based on the physical exam findings and EMG/NCV, Dr. Vender diagnosed Petitioner with bilateral carpal tunnel syndrome and indicated the appropriate treatment would be bilateral carpal tunnel releases followed by a course of physical therapy. Dr. Vender noted that her condition did not require any medication and did not require MRI imaging.

Dr. Vender opined that Petitioner was a mediator, and she stated she types all day long. Dr. Vender opined that carpal tunnel syndrome is caused by repetitive movement that is forceful or exertional. The act of typing on a laptop did not rise to the level of force or exertion to cause the development of carpal tunnel syndrome. Dr. Vender noted that half of all carpal tunnel cases are idiopathic and the other half have risk factors. Dr. Vender opined Petitioner's gender and high BMI were risk factors for developing carpal tunnel syndrome without repetitive movement that is forceful or exertional. Dr. Vender concluded that Petitioner's bilateral carpal tunnel syndrome was not caused by her job duties.

CONCLUSIONS OF LAW

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

The Arbitrator concludes Petitioner did not sustain a repetitive trauma injury to both her hands arising out of and in the course of her employment by Respondent, which manifested itself on June 24, 2024, and her current condition of ill-being is not causally related to her work activities.

In support of this conclusion the Arbitrator notes the following:

The Petitioner bears the burden of proving by a preponderance of the evidence that her condition arose out of and in the course of her employment and that her current condition of ill-being is causally related to her employment. In this matter the medical evidence and expert testimony demonstrate that Petitioner's condition is likely idiopathic or related to personal risk factors rather than her sedentary office duties.

In support of Respondent's accident and causation disputes, the unrebutted testimony of Dr. Michael Vender was entered into evidence. Dr. Vender testified that a causal relationship in carpal tunnel cases

requires forceful activities performed on a regular and persistent basis. Petitioner's job is office-based and sedentary, involving primarily typing and phone usage. Dr. Vender concluded that typing on a laptop does not cause carpal tunnel syndrome. While Petitioner may experience symptoms while typing, Dr. Vender clarified that this is merely an elicitation of symptoms rather than the work activity causing, accelerating, or aggravating the underlying pathology.

The medical records identified several personal health factors that are recognized contributors to the development of carpal tunnel syndrome, independent of any work activities. At the time of the accident date, Petitioner was at a high BMI with a height of 5'9" and weight of 280 pounds, which Dr. Vender indicated was a significant risk factor and a likely contributor to Petitioner's carpal tunnel syndrome. Further, Dr. Vender opined that carpal tunnel syndrome is statistically more common in females and Petitioner's hormones, along with the 2023 surgery, could be a contributing factor.

Further, the medical records provide inconsistent symptom history and alternative explanations for Petitioner's condition. Petitioner reported that her left-hand symptoms developed following the placement of an IV during her November 2023 surgery. She also admitted that some of her symptoms may have existed prior to the 2023 surgery and subsequent IV placement, further distancing the onset from the accident date of June 24, 2024. Also, despite claiming that her laptop setup caused her symptoms starting as early as 2021, Petitioner testified she has taken no significant measures to modify her workspace, such as using a provided external keyboard or mouse, which suggests the work environment was not the primary driver of her medical decisions.

The Arbitrator notes there is a conflict between Petitioner's testimony regarding her daily workflow and the history she provided to the medical providers. Petitioner testified she spends approximately 15-20% of her 7-hour workday on the phone. This implies that her typing based activities occupy less than 6 hours of her day. Despite this testimony, Dr. Vender, Dr. Fernandez, and the occupational therapy records all indicated they were told she typed 8 hours a day. Petitioner introduced photographs of her typing position. The photographs showed straight, level wrist posture without the wrist leaning on the edge of the table. By contrast, Petitioner provided a history to her physicians indicating a work configuration that required her wrists to lean consistently on the edge of the table. Further, Dr. Fernandez indicated it was his understanding she typed with "significant hyperextension posture across the wrist", which is inconsistent with the wrist position described by Petitioner at trial.

The weight of the medical evidence, specifically the testimony of Dr. Vender and the Petitioner, establishes that the Petitioner's bilateral carpal tunnel syndrome is a result of personal constitutional factors and not her job duties. Because the work activities did not involve forceful or exertional movements required to cause such an injury, and Petitioner's treaters did not have an accurate description of Petitioner's work flow and configuration, the Arbitrator finds Petitioner failed to prove she sustained a repetitive trauma injury to both her hands arising out of and in the course of her employment, which manifested itself on June 24, 2024, and her current condition of ill-being is not causally related to her work activities.

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

Having found with respect to Issue C and Issue F, the Arbitrator finds the medical services provided to the Petitioner were not reasonable and necessary to relieve a work-related injury.

Issue (K): Prospective Medical Treatment

Having found with respect to Issue C and Issue F, the Arbitrator finds the Petitioner is not entitled to prospective medical treatment to relieve a work-related injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC021717
Case Name	Linda Carlisle v. Ascension Health
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0302
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Scott Goldstein
Respondent Attorney	Micaela Cassidy

DATE FILED: 10/28/2026

/s/Maria Portela, 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)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda Carlisle,

Petitioner,

vs. NO: 25 WC 021717

Ascension Health,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 7, 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 Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $33,000.00. 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.

OCTOBER 28 2026

/s/ *Maria E. Portela*

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MEP/ypv
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/s/ *Christopher A. Harris*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC021717
Case Name	Linda Carlisle v. Ascension Health
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Scott Goldstein
Respondent Attorney	Andrea Carlson

DATE FILED: 4/7/2026

/s/ Rachael Sinnen, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 7 2026 3.62%

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)

Linda Carlisle
Employee/Petitioner

v.

Ascension Health
Employer/Respondent

Case # **25** WC **021717**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **January 8, 2026.** 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, **August 4, 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 **$114,400.00;** the average weekly wage was **$2,200.00**

On the date of accident, Petitioner was **73** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner directly through her counsel for outstanding medical services itemized in Petitioner's Exhibit 1, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner directly through her counsel temporary total disability benefits of **$1,466.67 per week** for **22 3/7 weeks**, commencing **August 5, 2025,** through **January 8, 2025,** as provided in Section 8(b) of the Act.

Respondent shall approve and pay for left shoulder arthroscopic surgery and necessary post-operative care as prescribed by Dr. Sompalli as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator declines to impose penalties or fees upon Respondent.

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

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

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



Signature of Arbitrator

APRIL 7 2026

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda Carlisle,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 25WC021717
Ascension Health,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on January 8, 2026, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing [pursuant to Section 19b] under the Illinois Workers' Compensation Act "Act." Issues in dispute include accident, causation, unpaid medical bills, temporary total disability "TTD," penalties/attorney's fees under Sections 19(k), 19(l), and 16 of the Act, and prospective medical treatment. Arbitrator's Exhibit "Ax" 1.

Testimony of Petitioner

Petitioner testified that she was employed by Ascension Health as a traveling MRI technician. She testified that she resided in Maywood, Illinois and received a per diem because her work assignment required her to travel more than 50 miles. The per diem was intended to cover expenses such as housing, gas, lodging, and food. Petitioner testified that she began working for Ascension Health in approximately March 2025 and, at times, stayed near the facility when she was on call. (T. pp. 15–20)

Petitioner testified that on August 4, 2025, she worked a shift from approximately 10:00 a.m. until after 9:00 p.m. at an Ascension Health facility (All-Saints Campus) in Racine, Wisconsin. (T. pp. 20-21) After completing her shift, she walked to her vehicle in the parking garage. As she walked to her car, she stepped on something in the parking garage, causing her foot to roll and resulting in her falling to the ground. She testified that she landed on both knees and her wrists. (T. pp. 20-22) Petitioner experienced pain in her knees, right wrist, and left shoulder. (T. pp. 30-31)

Petitioner testified that she did not trip over her own feet and that she felt something under her foot at the time of the fall. She believed it to be a rock or debris. (T. p. 22, 30) Petitioner testified that the fall occurred on the lower level of the parking garage and that the upper levels were under construction. (T. pp. 22-23). At the time of her fall, Petitioner was carrying a backpack that had her lab coat, mask, coffee mug and lunch container in it. (T. pp. 51-52).

Petitioner testified that she parked in the lower level of the parking garage in an area marked with a sign for employees. (T. pp. 23-24, 58-59) Petitioner acknowledged that other parking areas were available at the facility for employees to use. (T. pp. 58-59) She testified that she parked in the garage because it was the closest parking area. (T. pp. 22-24)

Testimony of Skyler Odgers

Mr. Skyler Odgers testified on behalf of Respondent. He is employed by Medxcel as an area director and has held that position for approximately three and one-half years. He testified that Medxcel provides facility management and maintenance services for Ascension Health and that, in his role, he oversees facilities operations for multiple hospitals in Wisconsin, including the All-Saints Campus in Racine. His responsibilities include oversight of maintenance, capital projects, and facility operations. (T. pp. 67–69)

Mr. Odgers testified regarding the layout of the campus parking areas. (T. pp. 71-76; RX3). He stated that the campus includes multiple parking lots and one multi-level parking garage consisting of a lower level, first, second, and third levels. He testified that a majority of the lower level of the parking garage is designated for employee and physician parking, while a smaller portion is designated for cancer center patients. (T. pp. 69–71) He testified that these designations are marked by signage and that employees are expected to park in designated employee areas. He further testified that employees may receive a ticket from security if they park in areas designated for patients. (T. pp. 84–85) Mr. Odgers confirmed that employees have the option to park either in the parking garage or in other parking lots on campus, provided they park in designated areas for employees. (T. p. 78)

Mr. Odgers testified that, on August 4, 2025, resurfacing work was being performed on the second and third levels of the parking garage. He testified that this work did not generate debris such as rocks or gravel and that no construction work was occurring on the lower level of the parking garage. (T. pp. 78–81) Mr. Odgers further testified that the parking garage is periodically cleaned, typically once or twice per year, and that materials such as rocks, leaves, and other debris may be brought into the structure by vehicles and can accumulate on the floors. (T. pp. 88-90)

Testimony of Alison McClairy

Ms. Alison McClary testified on behalf of Respondent. She testified that she is employed by Respondent as the manager of the imaging department at the All-Saints Campus in Racine, Wisconsin, where she oversees diagnostic imaging services and MRI technicians. She testified that she was familiar with Petitioner through her work as an agency MRI technician and identified Petitioner at trial. (T. pp. 94–95)

Ms. McClary testified that Petitioner worked on August 4, 2025 and reported an injury the following day during a telephone conversation. She testified that Petitioner reported that she had fallen in the parking garage while leaving the facility at the end of her shift. Ms. McClary testified that she does not recall whether Petitioner reported stepping on a rock or debris at the time of the fall. (T. pp. 96–97)

Testimony of Crystal Gilmore

Ms. Crystal Gilmore testified via an evidence deposition on behalf of Respondent on January 5, 2026. (RX1) Ms. Gilmore testified that she is employed by Sedgwick as a claims examiner and is responsible for administering workers' compensation claims on behalf of Ascension Health. She testified that she handles claims from beginning to end, including reviewing claims, determining what additional information is needed, and making initial determinations regarding compensability under Illinois law. (RX1 at 5)

Ms. Gilmore testified that, as part of her investigation process, it is customary for her to request or obtain recorded statements from claimants. She testified that, before recording any statement, she informs the claimant that the statement will be recorded and obtains their permission to proceed. Ms. Gilmore testified that she confirms a claimant's identity prior to taking a recorded statement by verifying information such as the claimant's date of birth and the last four digits of their Social Security number. Ms. Gilmore testified that she follows a general template of questions, although the specific questions may vary depending on jurisdictional requirements. (RX1 at 6-8)

Ms. Gilmore testified that she obtained a recorded statement (RX2) from Petitioner on August 15, 2025 and testified to the authenticity of the recording. (RX1 at 8-9) Ms. Gilmore confirmed that Petitioner gave permission for the statement to be recorded. (RX1 at 11)

Ms. Gilmore testified that she was aware that Petitioner was represented on August 22, 2025, but, at the time she took the recorded statement on August 15, 2025, she did not know Petitioner was represented. (RX1 at 12) Ms. Gilmore testified that she understands that once she knows a claimant is represented, she not to communicate directly with that claimant and that communications should go through counsel. (RX1 at 12-16)

On cross-examination, Ms. Gilmore testified that she does not specifically ask, as part of her standard questionnaire, whether a claimant is represented by counsel. She stated that, in her experience, claimants typically inform her if they are represented when she initiates the process of taking a recorded statement. She further testified that she does not generally anticipate that claimants will already be represented while the claim is still under investigation. (RX1 at 13–14)

Ms. Gilmore testified that, at the time she took Petitioner's recorded statement, the claim was under investigation and had not yet been denied. (RX1 at 16-17) Ms. Gilmore testified that the Petitioner's claim was eventually denied because "we were unable to confirm what exactly she stepped on" and Petitioner "wasn't 100-percent sure. She said a rock or something but she did not look. She was not sure." (RX1 at 17) Ms. Gilmore also testified that the denial was based on "not knowing exactly what she stepped on to cause the fall in addition to there were other parking lots that she could have parked in." (RX1 at 20).

Summary of Medical Records

On August 5, 2025, Petitioner was examined at Rush Oak Park Medical Center emergency department. She was noted to be 73 years old, presenting with foot pain. She provided a history of

walking last night when she tripped and fell, twisting her foot and landing on her knees. She reported pain of the left foot, bilateral knees and her left shoulder. She stated her shoulder pain is constant and a chronic problem for her but is a little bit exacerbated after the fall. She presented for a mechanical fall, left foot knee and shoulder injuries. The impression was that she most likely sustained a soft tissue injury, abrasions as well as lower concern for bony injury aside from foot. The assessment included left foot pain, left shoulder pain, and acute pain of both knees. Petitioner was provided with crutches. X-ray of the bilateral knees was secured showing no acute osseous abnormality. The x-ray of the left foot revealed subtle linear lucency extending through the medical aspect of the medial cuneiform seeon only on AP view favored to be projectional. There was a recommendation for correlation with point tenderness for possible minimally displaced fracture. Petitioner was cleared and discharged home. She was ambulating with a steady gait with crutch use. (PX 2)

On August 18, 2025, Petitioner presented to AMCI for complaints of left shoulder, right wrist, right knee, and left ankle pain. She provided a history as working on duty as an MRI tech when she was leaving to go home and was walking in the employee parking garage and stepped on a "hard object" causing her fall forward, landing on both knees and both arms outstretched. She stated pain started immediately and got worse. The assessment included shoulder/upper arm sprain, left, wrist sprain, right, knee/lower leg sprain, right, ankle sprain, left, foot sprain, left, possible fracture of left foot, initial encounter for closed fracture. An MRI of her left shoulder, left ankle, and left arm were ordered. She was referred to podiatry for her left foot, and PT was ordered for her ankle. She was ordered off work. (PX4 at 17)

From August 19, 2025, through December 2, 2025, Petitioner participated in physical therapy through AMCI and Oak Park Medical Center (PX4)

On August 23, 2025, Petitioner was examined by Dr. Anderson at Advanced Foot and Ankle Center. She reported pain in her left foot and ankle. She related that she sustained an injury at work while in the parking lot. She stepped on debris, possible rock, and her ankle rolled. This caused her to fall to ground. She tried to catch herself and landed on her right wrist. She stated she did a "Superman" when she landed. She was in a CAM boot on this date. She had an MRI scheduled soon for her left ankle. An ankle orthosis was fitted and given to the Petitioner to wear. The plan was to decide on a treatment plan until the MRI, but physical therapy was recommended (PX5 at 21-23)

X-ray imaging was secured at AMCI on August 26, 2025 through September 16, 2025. Specifically, her x-ray imaging of the left shoulder and knee on August 26, 2025 were negative. Xray imaging of the right wrist was secured on August 29, 2025. The impression was no soft tissue nodules or bony erosions and no fracture or dislocation evident. (PX4)

An MRI of the left foot and ankle was secured on September 16, 2025. The impression of the left foot was a T1 and STIR hyperintense lesion in the plantar subcutaneous plane at the level of the head of the fifth metatarsal. Follow up was recommended. The MRI of the left ankle revealed a non-displaced fracture in cuboid with marrow edema and sprain of the spring and deltoid ligaments. (PX4)

On September 17, 2025, Petitioner underwent an MRI of the left shoulder. The impression was a full thickness near full width tear and low-grade interstitial tearing involving the infraspinatus and On September 22, 2025, Petitioner presented back to AMCI for left shoulder, right wrist, right knee, and left ankle pain. She presented to review the MRI results of left shoulder. It was also noted in her medical history that she has had "repetitive stress pain to the left shoulder in September 2024 and got two cortisone shots, most recently in Feb 2025." Due to the shoulder MRI, she was referred to orthopedics and also referred to a podiatrist for her foot. The assessment included MRI findings causally related to and/or exacerbated by the incident noted in the initial visit history. (PX4 at 38-41)

Petitioner presented Elite Orthopaedics for left shoulder pain on September 25, 2025. She was evaluated by Dr. Sompalli. Petitioner states that prior to the work accident she did not have shoulder pain. Petitioner presents for left shoulder pain after a work accident on August 4, 2025. She provided a history of working as an MRI tech. As she was walking to the parking garage after she finished her shift when she stepped on a rock, twisting her ankle, and fell. The MRI of her left shoulder was reviewed and showed full thickness supraspinatus tendon tear, atrophy of supraspinatus tendon with fatty infiltration, type 2 acromion, severe AC joint osteoarthritis, and low-grade infraspinatus and subscapularis tendon tears. A cortisone injection for the left shoulder was ordered and left shoulder x-rays were recommended to further evaluate osteoarthritis. Dr. Sompalli noted that Petitioner sustained a permanent aggravation of pre-existing asymptomatic chronic rotator cuff tears and a permanent aggravation of pre-existing AC joint osteoarthritis of the left shoulder, to become symptomatic and painful, causally related to the injury that occurred on August 4, 2025. The injection was performed. A DME order was entered for a TENS unit and ultrasound for left shoulder (ordered through Flexus Medical). Petitioner was provided with restrictions of no use of the left arm. (PX3 at 11-14)

Petitioner presented for a left foot issue and to review MRI of left ankle on September 29, 2025 with Dr. Joel Anderson. The MRI revealed a nondisplaced fracture in the cuboid with narrow edema and a sprain of the spring and deltoid ligaments. It was noted that the MRI images were of low quality and thus unremarkable. She was to continue wearing an ankle AFO and start physical therapy. She was to remain off work. (PX5 at 18-20)

Petitioner had x-rays of left shoulder at AMCI. The impression included no acute fracture or dislocation and mild degenerative changes in glenohumeral and acromioclavicular joints. (PX4)
On October 2, 2025, Petitioner was re-examined at Elite Orthopedics. She was taking Tylenol and Advil for pain. A new left shoulder x-ray showed lateral down sloping acromion, AC joint osteoarthritis, but no cuff arthropathy. It was opined that Petitioner had a permanent aggravation of a pre-existing chronic rotator cuff tear and AC joint osteoarthritis from the work accident. Dr. Sompalli recommended left shoulder arthroscopy for rotator cuff repair. She was provided with work restrictions of strict no use of left arm. (PX3)

Petitioner returned to AMCI on October 20, 2025, for a follow up visit for left shoulder, right wrist pain, right knee pain, and left ankle and foot pain following a work-related accident on August 4, 2025. Petitioner was advised to continue treating the left foot with her podiatrist and continue treating the left shoulder with an orthopedic specialist. Her medications were adjusted. She was considered "disabled" until cleared by specialist. (PX4 at 48-52)

On December 17, 2025, Petitioner returned to Dr. Anderson. She reported improvement with pain now only occurring with certain movements localized to lateral ankle. Swelling was intermittent with recent exacerbation following prolonged standing during Thanksgiving cooking, which has since resolved. She had completed a course of physical therapy. She had not yet undergone the rotator cuff surgery because her case is being challenged and denied currently. The assessment included sprain of left ankle, closed nondisplaced fracture of cuboid of left foot with routine healing, strain of peroneal tendon of left foot, sinus tarsi syndrome of left ankle, left ankle instability, and acute left ankle pain. She was allowed to discontinue TayCo AFO and weight bear as tolerated in supportive shoes with compressive ankle sleeve. The plan was to discontinue physical therapy and proceed with a home exercise program. Petitioner was ordered off work and was to return in 6 weeks. (PX5 at 14-16)

CONCLUSIONS OF LAW

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

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

It is clear that Petitioner was a traveling employee under the Act. Petitioner worked for Respondent as a traveling MRI technician. Petitioner's work assignments required her to travel more than 50 miles to various facilities of Respondent. She received a per diem to cover expenses such as housing, gas, lodging, and food. (*See* T. pp. 15–20) At the time of the accident, Petitioner was working at an Ascension Health facility (All-Saints Campus) in Racine, Wisconsin.

A finding that a claimant is a traveling employee does not relieve the employee of the burden of proving that her injury arose out of and in the course of her employment. The test of whether a traveling employee's injury arose out of and in the course of employment is the reasonableness of the conduct in which she was engaged at the time of the injury and whether that conduct might have been anticipated or foreseen by the employer. Mlynarczyk v. Illinois Workers' Compensation Comm'n (Obrochta), 2013 IL App (3d) 120411WC, ¶ 17, 999 N.E.2d 711 citing Venture-Newberg Perini Stone & Webster v. Illinois Workers' Compensation Comm'n, 2012 IL App (4th) 110847WC, 981 N.E.2d 1091; Cox v. Illinois Workers' Compensation Comm'n, 406 Ill. App. 3d 541, 941 N.E.2d 961 (1st Dist. 2010).

Petitioner credibly testified that she was parked in the lower level of the parking garage in an area designated for employees. The upper levels of the parking garage were under constructions. Petitioner was at the end of her shift, returning to her car while carrying a backpack of both personal and work items. Petitioner credibly testified that she felt something under her foot (she believed it to be a rock or debris but was unsure exactly what it was) causing her to fall to the ground. (*See* T. p. 22, 30) Petitioner's recorded statement to Ms. Gilmore was consistent with her trial testimony and with the reported history documented by Petitioner's treating physicians.

While Respondent's witness, Mr. Odgers, did not believe the construction in the upper levels of the parking garage generated debris on the lower level of the parking garage, he conceded that

materials such as rocks, leaves, and other debris may be brought into the parking garage by vehicles and can accumulate on the floors. (*See* T. pp. 78-81, 88-90). Mr. Odgers also confirmed that employees are expected to park in designated employee areas and that employees have the option to park either in the parking garage or in other parking lots on campus, provided they park in designated areas for employees. (*See* T. pp. 78, 84–85)

The Arbitrator finds Petitioner's conduct at the time of her injury reasonable and foreseeable. In fact, Mr. Odgers testimony shows that it was not only reasonable but expected that employees park in designated employee areas and that it was foreseeable that materials such as rocks, leaves, and other debris may be brought into those areas. Petitioner's inability to recall specifically what was under her foot at the time of her fall does not affect the reasonableness and foreseeability of her conduct at the time of her injury. Further, whether Petitioner had access to other employee designated parking lots does not affect the legal analysis of "arising out of" as a traveling employee. Overall, the Arbitrator finds that Petitioner has met her burden as a traveling employee of proving that her injury arose out of and in the course of her employment.

Based on the record as a whole, the Arbitrator finds that Petitioner's accident ***did*** arise out of and in the course of Petitioner's employment by Respondent.

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

As a result of her fall on August 4, 2025, the medical records show that Petitioner sustained injuries to various body parts, with the most severe being her left shoulder and her left foot/ankle.

With respect to the left shoulder, the medical records do indicate that Petitioner had left shoulder pain prior to her work accident. In Dr. Sompalli's September 25, 2025 treatment note, Petitioner admitted to having received cortisone injections to the left shoulder from a prior workers' compensation claim with the last injection being over a year ago that resovled her left shoulder pain. (*See* PX3 at 10). While Petitioner may have had left shoulder pain before the instant work accident, it is clear that Petitioner was working full duty at the time of her fall and there is no evidence to suggest that she was under active treatment at the time of her fall. The Arbitrator relies on the medical opinions of Dr. Sompalli to find that Petitioner's left shoulder condition is caually related to the work accident. Dr. Sompalli's records note that Petitioner's left shoulder MRI reveals a full thickness supraspinatus tendon tear, severe AC joint osteoarthritis, and low-grade infraspinatus and subscapularis tendon tears. Dr. Sompalli opined that Petitioner "has a permanent aggravation of pre-existing asymptomatic chronic rotator cuff tears and a permanent aggravation of pre-existing AC joint osteoarthritis of the left shoulder to become symptomatic and painful causally related to the WC injury that occurred on 08/04/25." (PX3 at 12)

With regards to the left foot/ankle, there is no evidence to suggest that Petitioner had left foot/ankle pain or treatment prior to the work accident. Petitioner was working full duty at the time of her fall. The medical records from AMCI document Petitioner's injuries, history of accident and contain causation opinions. Petitioner was ultimately referred to Dr. Anderson at Advanced Foot and Ankle Center. MRIs of the left foot and ankle showed a T1 and STIR hyperintense lesion in the plantar subcutaneous plane at the level of the head of the fifth metatarsal, a non-displaced

fracture in the cuboid with marrow edema, and a sprain of the spring and deltoid ligaments. (*See* PX4) Dr. Anderson diagnosed Petitioner with a sprain of the left ankle, closed nondisplaced fracture of the cuboid with routine healing, strain of the peroneal tendon of left foot, sinus tarsi syndrome of left ankle, left ankle instability, and acute left ankle pain. At the time of trial, Petitioner had completed physical therapy for the left foot/ankle, was to bear weight as tolerated in supportive shoes with a compressive ankle sleeve, was to remain off work, and was to return to Dr. Anderson for a follow up. (*See* PX5 at 14-16)

Based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being ***is*** causally related to the injury.

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

The Arbitrator relies on the medical opinions of Petitioner's treating physicians as documented in the medical records submitted into evidence to determine the reasonableness and necessity of Petitioner's past medical services. The Arbitrator also relies on the billing records submitted into evidence and was able to find their corresponding medical records.

Based on the record as a whole, 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 through her legal counsel for the outstanding medical services itemized in Petitioner's Exhibit 1 pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

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

The Arbitrator relies on the medical opinions of Petitioner's treating physicians as documented in their medical records to determine whether Petitioner is entitled to any prospective medical care. Specifically, Petitioner's treating physician, Dr. Sompalli, recommended a left shoulder arthroscopy for rotator cuff repair noting that Petitioner suffered a permanent aggravation of a pre-existing chronic rotator cuff tear and AC joint osteoarthritis from the work accident. (PX3)

Based on the record as a whole, the Arbitrator finds that Petitioner ***is*** entitled to prospective medical care. Respondent shall approve and pay for left shoulder arthroscopic surgery and necessary post-operative care as prescribed by Dr. Sompalli as provided in Section 8(a) and 8.2 of the Act.

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

The Arbitrator relies on the medical opinions of Petitioner's treating physicians as documented in their medical records to determine whether Petitioner is entitled to TTD benefits. Specifically, Petitioner was first placed off work by her doctors at AMCI (*See* PX4 at 17), was later placed on work restrictions by Dr. Sompalli for her left arm, (*See* PX3 at 11-14) and was placed off work for

her left foot by Dr. Anderson (*See* PX5 at 18-20). At the time of trial, Petitioner was not working with restrictions of no use of the left arm by Dr. Sompalli while awaiting authorization for surgery (*See* PX3) and off work for her left foot per Dr. Anderson (*See* PX5 at 14-16).

Based on the record as a whole, the Arbitrator finds Respondent liable for **22 3/7 weeks** of TTD benefits **(August 5, 2025, through January 8, 2026)** at a weekly rate of **$1,466.67** which corresponds to **$32,895.31** to be paid directly to Petitioner through her legal counsel.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner had signed an Application for Adjustment of Claims with her counsel's office on August 14, 2025, gave the recorded statement to Ms. Gilmore on August 15, 2025, the Application for Adjustment of Claims was filed with the Commission on August 18, 2025, and Ms. Gilmore learned of the representation on August 22, 2025. While the Arbitrator finds it extremely convenient for Respondent that Ms. Gilmore does not routinely ask claimants whether they are represented before obtaining a statement (*See* RX1 at 13-14), Petitioner did not inform Ms. Gilmore of her recent representation and consented to the recorded statement. (*See also* T. pp. 7-13)

Ms. Gilmore testified that the denial was based on "not knowing exactly what she stepped on to cause the fall in addition to there were other parking lots that she could have parked in." (RX1 at 20) While Respondent did not ultimately prevail on the issue of accident, the Arbitrator finds that Respondent's denial was not unreasonable, vexatious or in bad faith.

Based on the record as a whole, the Arbitrator declines to impose penalties or fees upon Respondent.

It is so ordered:



Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC021113
Case Name	Miko Stewart v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0303
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	Anne Zakrzewski

DATE FILED: 10/28/2026

/s/Maria Portela, 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)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Miko Stewart,

Petitioner,

vs. NO: 25 WC 021113

Chicago Transit Authority,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 18, 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 Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

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

OCTOBER 28 2026

/s/ *Maria E. Portela*

o102226
MEP/ypv
049

/s/ *Christopher A. Harris*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC021113
Case Name	Miko Stewart v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	Anne Zakrzewski

DATE FILED: 2/18/2026

/s/ Jeffrey Huebsch, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 18 2026 3.50%

M. Stewart v. CTA, 25 WC 021113

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Miko Stewart
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **25** WC **021113**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **November 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, **March 7, 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 $**86,819.72**; the average weekly wage was $**1,669.61**

On the date of accident, Petitioner was **55** 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 $**16,378.03** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**16,378.03.**

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act, subject to the Parties' agreement set forth below.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the Medical Fee Schedule of $3,095.00, as provided in Sections 8(a) and 8.2 of the Act, and as set forth below.

Respondent shall authorize and pay for the right shoulder arthroscopic rotator cuff repair with possible open biceps tenodesis and cervical spine MRI and spinal consult as offered by Dr. Chudik, along with all related services, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,113.08/week for 30-6/7 weeks, commencing April 18, 2025 through November 19, 2025, pursuant to 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.



Signature of Arbitrator

FEBRUARY 18 2026

FINDINGS OF FACT

Petitioner's Testimony:

Petitioner was employed by Respondent as a bus operator. She had been so employed since 2017. (T. 11). Her job duties include operating either a 40-foot standard bus or a 60-foot articulated bus and stopping at every bus stop (about every block), pick people up and if they are in a wheel chair then assist them into getting locked in on the bus and drive passengers to their destination. (T. 12).

Petitioner testified that she was injured while working on March 7, 2025. She was driving at the end of the line and, as she was turning into the terminal, her bus jerked really hard and she felt something in her arm pull. (T. 12-13). Her right arm went limp. (T. 13). She testified that she was driving a 40-foot bus that day. The bus steering mechanism is different than a regular car because the steering wheel in a car is a lot smaller than the steering wheel on a bus and a car steering wheel is a lot easier to maneuver as opposed to the bus steering wheel. A lot of force is required to turn the bus. (T. 14).

Petitioner testified that she reported the incident to Control. An ambulance was called, and she was taken to South Shore Hospital. (T. 15).

Petitioner testified that on March 7, 2025, she was working at her normal position, full duty, without any physical restrictions regarding her right shoulder. (T. 16). She testified that prior to March of 2025, she had received treatment for right shoulder pain. This was in November, 2024. (T. 15-16). She received an injection and it alleviated her symptoms. (T. 16).

At South Shore, Petitioner had complaints of right shoulder pain. She was examined and had an x-ray. She was given medication and told to follow up with her PCP. She did not follow up with her PCP. (T. 16-17).

Petitioner testified that she followed up with another doctor, Steven Chudik, an orthopedist. (T. 17). She was seen by Dr. Chudik on March 26, 2025. Petitioner testified that her shoulder, neck and biceps were bothering her when she presented to Dr. Chudik. (T. 17). She told Dr. Chudik that she had prior right shoulder complaints. (T. 17-18). Dr. Chudik issued work restrictions and ordered an MRI of the right shoulder. (T. 18).

Petitioner continued to work. (T. 18).

The MRI was done on April 5, 2025. (T. 18). Petitioner saw Dr. Chudik on April 16, 2025 to review the MRI results. Petitioner testified that her arm was worse at this time. She was having shoulder and bicep pain and severe neck pain. Dr. Chudik gave her a shoulder injection and recommended physical therapy. (T. 19). Dr. Chudik placed Petitioner off work. Petitioner testified that the injection provided temporary relief. (T. 20).

Petitioner testified that she next saw Dr. Chudik on June 11, 2025. She had no improvement after undergoing PT. Dr. Chudik recommended right shoulder surgery. (T. 20).

Petitioner was seen by Dr. Forsythe on July 17, 2025, at the request of her employer. She brought her MRI with her. Petitioner testified that the examination by Dr. Forsythe took about 6 minutes and consisted of her pushing on his hands. (T. 22). Petitioner testified that after the Dr. Forsythe exam, surgery was denied, and benefits stopped. She did not return to work. (T. 22).

Petitioner saw Dr. Chudik in September of 2025. She testified that her shoulder improved when she is not really active, but she still had a lot of pain. Dr. Chudik kept her off work at that visit. (T. 22-23). She saw Dr. Chudik again on November 3, 2025 and it was noted that her symptoms were improving. Petitioner said that she was not using her arm, and was not being very active. (T. 23).

Petitioner testified that since the accident of March of 2025, she has not reinjured her right shoulder or her neck. (T. 23). Petitioner was asked to compare her symptoms from November of 2024 to her symptoms after March 7, 2025 and she said that in November, she was still working and after the injury in March, the pain is totally different. She is limited. It hurts a lot. She doesn't have much strength in her arm. She did not have biceps pain in November. She did not have neck pain prior to the March 7, 2025 injury. (T. 24-25). She can't turn the wheel on the bus because it requires hand-over hand turning. (T. 25).

Petitioner testified that she has not returned to work. (T. 25). She is not receiving TTD benefits. (T. 26).

Petitioner testified that she wants the right shoulder surgery. (T. 26).

On cross examination, Petitioner identified RX 1 as an IOD (Injured on Duty) form. Petitioner identified her signature on RX 1. The form says that Petitioner was turning into the terminal before the injury. The form does not state that the wheel was hard to turn or that the bus hit a pothole. (T. 28).

Petitioner testified that Dr. Chudik ordered PT and she participated until at least August 11, 2025. She now does home exercise. (T. 30-31).

Petitioner agreed that at the last Dr. Chudik visit on November 3, 2025, she reported that her shoulder was feeling okay. Her shoulder pain was mild, intermittent and dull at that time. (T. 31).

Petitioner's primary care doctor, Dr. Assefa, ordered the MRI that she had in December of 2024. She first saw Dr. Assefa for her right shoulder around the beginning of November. Her shoulder had been bothering her and she was limited in using her arm at that time. She did not return to see Dr. Assefa for further treatment for her shoulder because he told her to see an orthopedic doctor. (T. 32-33). Petitioner discussed surgery with a doctor in November or December of 2024. Surgery was not recommended, as Petitioner had an injection and then it was fine. (T. 36-37).

Documentary Evidence:

PX 1 was the records of South Shore Hospital. Petitioner presented to the Emergency Room at South Shore Hospital on March 7, 2025. Petitioner reported that she pulled something in her shoulder and felt sudden pain in her right shoulder after moving the wheel of her bus. X-rays were negative for acute pathology. On examination, right shoulder tenderness was noted along with diminished range of motion. She was prescribed Motrin for her right shoulder pain and instructed to follow-up with her primary care provider. (PX 1).

PX 2 was the records of Illinois Bone and Joint Institute (IBJI). On March 26, 2025, Petitioner was seen at Illinois Bone and Joint Institute by Dominique Gamez, APN for orthopedic surgeon Dr. Steven Chudik, M.D., at IBJI, with complains of right shoulder pain. Petitioner reported that she felt a pull in the right shoulder and had immediate pain in her right shoulder and neck while driving a CTA bus. She reported having prior right shoulder pain, with a diagnosis of right rotator cuff tear, and receiving an injection in the past. She was not recommended physical therapy at that time, due to experiencing minimal to no pain after receiving injection. (PX 2, pp. 1-3). Petitioner stated the current injury she suffered feels very different from the prior

shoulder pain she experienced, reporting current terrible right shoulder pain, intolerance for driving, right shoulder weakness and stiffness, and right shoulder pain at night. (PX 2, p. 3). On exam, right shoulder pain, decreased strength and range of motion, along with a positive Hawkin's Impingement test were noted. (PX 2, pp. 3-4). Concern for rotator cuff pathology was causally related to the work injury. Dr. Chudik ordered an MRI, placed Petitioner on light duty work restrictions, and scheduled a follow-up appointment following the MRI. (PX 2, pp. 4-8).

On April 5, 2025, the Petitioner underwent an MRI of her right shoulder at IBJI. (PX 2, pp. 13-23). The MRI revealed bursal surface and interstitial partial-thickness tearing anterior, central supraspinatus tendon, bicipital tendinosis, small joint effusion, and severe subacromial bursitis. (PX 2, p. 12). The prior right shoulder MRI was said to show evidence of a full-thickness supraspinatus tear and a low-grade partial tear of the leading edge of the infraspinatus tendon. (PX 2, p. 2). The prior MRI study was done on December 5, 2024 at Preferred Imaging and it was ordered by William Heller, MD. (PX 2, pp. 18-19).

On April 16, 2025, Petitioner was seen by Dr. Chudik, who charted that Petitioner continued to experience significant right shoulder pain with debilitating right neck pain. (PX 2, p. 29). Petitioner described the pain as causation for intolerance for driving, right shoulder weakness and stiffness, and pain at night. She reported struggling to tolerate her light duty work, as frequent standing and turning of her head makes her symptoms worsen. Dr. Chudik noted that the MRI revealed a partial thickness supraspinatus tear, delamination of the subscapularis, biceps tendinosis, and severe SA (sub acromial) bursitis. Dr. Chudik noted that his review of previous MRI conducted on December 5, 2024, was that imaging failed to show a full thickness tear of the right shoulder that preceded the work injury. Dr. Chudik charted that the patient's condition and need for treatment was causally related to the work injury she sustained on March 7, 2025. (PX 2, pp. 25-37).

On April 25, 2025, Petitioner began Physical therapy at Sports and Ortho P.C. (PX 3). She presented with intermittent pain and pain with movement and reported that she had full use of her Right Upper Extremity prior to the injury. The last PT note was on August 11, 2025. The Progress Note of August 4, 2025, shows that Petitioner had concerns regarding her range of motion and continued complaints of pain. It was noted she was still waiting for surgery approval which had been requested two weeks prior to improve her range of motion and get her back to work. Limiting factors were said to be range of motion and strength. Page 2 of the August 4, 2025 Progress Note was not included in PX 3. (PX 3, p. 32).

On June 11, 2025, Petitioner returned to Dr. Chudik after undergoing a cortisone injection at her last visit. (PX 2, p. 42). Petitioner continued to complain of right shoulder, biceps, and neck pain that continued to debilitate her. The injection provided about one week of partial relief and physical therapy has helped her shoulder range of motion, but she is still in notable pain. Petitioner had called about worsening symptoms on May 22, 2025 and Dr. Chudik had recommended a cervical MRI and follow-up with a spine specialist. It was noted that she reported near constant throbbing of the lateral shoulder at rest, neck pain and stiffness, posterior shoulder pain, and numbness of the hand that improved with movement. Petitioner reported that in one of her therapy sessions she got an acute increase in pain of the biceps. On exam, the proximal tendon is asymmetric with palpation, concerning for complete rupture. Based on continued complaints of shoulder pain and a clinically appearing proximal bicep rupture, and her condition failing to improve with conservative measures of physical therapy and the injection, Dr. Chudik recommended a right shoulder rotator cuff repair and possible bicep tenodesis. He was still recommending a cervical MRI and to follow up with a specialist for her neck. She was to remain off work. Dr. Chudik's diagnosis/impression was: Right shoulder impingement with partial thickness supra, subscap delam, and damage to biceps tendon and cervical radiculopathy. (PX 2, pp.42-44).

Dr. Chudik's letter of 6/11/2025 indicates that Petitioner should remain off work. She should return for pre-op, or in 6 weeks. Evaluation with a spine specialist was recommended. (PX 2, p. 57). Dr. Chudik's letter

of 6/12/2025 says that Petitioner suffered a work-related injury on 3/7/2025 and requires treatment. "Delays in proper treatment will result in lesser outcomes and prolonged recovery. The letter included records and an authorization request. (PX 2, p. 58).

On July 17, 2025, Petitioner presented to Midwest Orthopedics at Rush for a Section 12 examination by Dr. Brian Forsythe, MD. (RX 2). Dr. Forsythe in the history notes Petitioner injured her right shoulder while at work on 03/07/2025, when she was driving the bus making a left turn and she felt resistance in the steering wheel which jerked her arm and reported significant pain. Dr. Forsythe described viewing a video of the the CTA bus at the time of the reported injury ("…a one minute and 15 second video depicting the claimant driving a bus"). "She performs a left turn with both hands and appears to experience pain in her right shoulder." "Her shoulder drops and she is seen subsequently avoiding use of the right arm." Dr. Forsythe opined that Petitioner suffered a right shoulder strain as well as a temporary exacerbation of a pre-existing partial thickness rotator cuff tear. He opined that treatment rendered to the right shoulder had been reasonable and necessary. He opined that that Petitioner had returned to her preinjury baseline status. She could work full duty without restrictions. No further medical treatment was needed regarding the work injury. She had no disability related to the work injury. The physical exam revealed decreased strength and range of motion. Dr. Forsythe thought that Petitioner exhibited some symptom magnification, along with guarding during range of motion testing. Dr. Forsythe reported that he reviewed the 12/05/2024 MRI, which showed a high-grade partial thickness rotator cuff tear. Dr. Forsythe also reported that he personally reviewed the 4/05/2025 MRI, which showed subacromial/subdeltoid bursitis and a partial thickness rotator cuff tear that "demonstrates interval improvement as compared to the 12/25/2024 study." This is the only mention of a 12/25/2024 study and the Arbitrator is curious as to what the difference is between a review of a MRI study by Dr. Forsythe and a personal review of a MRI study by him is. Dr. Forsythe did not comment on the propriety of the surgery proposed by Dr. Chudik. (RX 2).

On July 22, 2025, Petitioner returned to IBJI and saw APN Dominique Gamez with continued complaints of pain. Surgery was recommended, but they were awaiting WC approval. The record notes that surgery was still being recommended as well as the cervical MRI and a follow up with a specialist of the neck. She was to continue to remain off work. (PX 2, pp. 62-63). Petitioner was seen again at IBJI on September 5, 2025, at which time surgery was still being recommended and she was to remain off work. (PX 2, pp. 75-77).

Petitioner was last seen at IBJI on November 3, 2025, by Gabrielle Loeck, PA-C. It was noted that she was doing well and her symptoms were still present but improving. (RX 3). Surgery was still being recommended as well as an MRI of her cervical spine and follow-up with specialist for her neck. She was to remain off-work while awaiting surgical approval. The diagnosis/impression remained Right shoulder impingement with partial thickness supra, subscap delam, and damage to biceps tendon and cervical radiculopathy. (RX 3). RX 3 also contains the bill for the November 3, 2025 visit, in the amount of $205.00.

PX 3 was records from Sports and Ortho, PC, where Petitioner underwent therapy. Petitioner had therapy at this facility from April 25, 2025 through July 25, 2025 for her right shoulder, biceps and cervical spine.

PX 4 was a bill from South Shore Hospital for the March 7, 2025 ER visit. The ER physician bill was $1,247.00 and the hospital charges were $1,643.00. The bills appear to have been paid by Cigna, Respondent's group carrier.

Neither Party submitted the records of Dr. Assefa, Dr. Heller, or the video that Dr. Forsythe viewed.

CONCLUSIONS OF LAW

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

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). Petitioner 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).

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).

The Arbitrator finds the Petitioner's testimony to be credible. The Arbitrator notes that Petitioner's testimony was consistent with the medical records as it relates to her symptoms and progress with treatment. Petitioner's description of the accident was consistent with the histories given in the medical records submitted into evidence, as well as the history reported to Dr. Forsythe. It is also consistent with Dr. Forsythe's description of the video. The Arbitrator also notes that Petitioner was truthful about her prior medical history as it relates to her right shoulder in her testimony and in the histories given to Dr. Forsythe and IBJI. Petitioner's testimony that she had prior right shoulder pain, from which she recovered after an injection and never was required to be off work or work restricted duty was unrebutted. Petitioner did not attempt to mislead the Arbitrator regarding her prior right shoulder pain complaints.

Regarding Issue C, whether Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent, the Arbitrator finds:

Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on March 7, 2025.

This finding is based on the credible testimony of Petitioner, the medical records and Dr. Forsythe's description of the accident video.

"The phrase 'in the course of' refers to the time, place, and circumstances under which the accident occurred." Orsini v. Industrial Comm 'n, 117 Ill. 2d 38, 44(1987). "Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment." Johnson v. Illinois Workers' Compensation Comm 'n, 2011 IL App (2d) 100418WC, ¶ 21. Petitioner was turning a bus into Respondent's terminal, her bus jerked really hard, and she felt something in her arm pull. Her right arm went limp. Petitioner was in the course of her employment by Respondent as a bus operator when the injury occurred.

"Arising out of" the employment refers to the origin or cause of a claimant's injury. Baldwin v. Illinois Workers' Compensation Comm 'n, 409 Ill. App. 3d 472, 478, (2011). A claimant must present evidence which supports a reasonable inference that the injury alleged stemmed from a risk associated with her employment. Builders Square, Inc. v. Industrial Comm 'n, 339 Ill. App. 3d 1006, 1010 (2003). To satisfy the arising out of element of a claim, it must be shown that the injury had its origin in some risk connected with, or incidental to,

the employment so as to create a causal connection between the employment and the accidental injury. "…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." Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58 (1989). The risk of a shoulder injury being sustained by a bus operator when turning the steering wheel of her bus, feeling a "jerk" and feeling something in her arm pull and then having the arm go limp arises out of a bus operator's employment. Petitioner was driving a bus. It is significant that Dr. Forsythe, Respondent's Section 12 examiner, viewed a video of the accident and did not dispute that an accidental injury occurred (albeit opining that the injury was a right shoulder strain with a temporary exacerbation of a partial thickness rotator cuff tear). Petitioner's injury arose out of her employment by Respondent.

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

Petitioner's current condition of ill-being regarding her right shoulder, to wit: Right shoulder impingement with partial thickness supra, subscap delam, and damage to biceps tendon and cervical radiculopathy, as diagnosed by Dr. Chudik, is causally related to the work accident of March 7, 2025.

This finding is based on the credible testimony of Petitioner, the medical records submitted into evidence, and the persuasive opinions of Dr. Chudik.

To obtain compensation under the Act, Petitioner is required to prove that some act or phase of her employment was a causative factor in her injury. The accidental injury needs only be a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Industrial Commission, 207 Ill. 2d 193, 205 (2003).

Petitioner testified that she had prior right shoulder problems in November and December of 2024. She received an injection and her shoulder felt better, so she ceased treatment. She lost no time from work as a result of the November/December shoulder problems and was working full duty as a bus operator on the date of the work accident. This testimony was unrebutted. No medical records regarding prior right shoulder treatment, beyond the December 5, 2024 MRI were submitted into evidence.

Dr. Chudik endorsed causation in his medical records, both as to the condition of ill-being and the need for treatment. The Arbitrator finds Dr. Chudik's opinion to be persuasive, as it best comports with the medical records adduced and Petitioner's unrebutted testimony that her prior right shoulder problems had alleviated with an injection. No evidence of ongoing shoulder symptoms or treatment between December of 2024 and the March 7, 2025 work accident was submitted. No evidence of any prior neck treatment or symptoms was adduced.

Petitioner lost no time from work as a result of the November/December 2024 right shoulder problems. Petitioner testified that surgery was discussed, but not recommended (offered?) during her November/December 2024 treatment. After the March 7, 2025 work injury, Petitioner was taken off work by Dr. Chudik and right shoulder surgery has been offered. Petitioner testified that her shoulder symptoms and pain were worse after the March 7, 2025 work accident. This supports a finding of causation.

Dr. Forsythe's opinions are found to be not persuasive. He endorses causation as to a right shoulder strain and temporary exacerbation of a pre-existing partial thickness rotator cuff tear. He thought that Petitioner had returned to her preinjury baseline status. Petitioner's preinjury status, per the submitted evidence, is that her November/December 2024 shoulder pain had diminished after an injection, such that no further treatment occurred, she was working full duty as a bus operator, and she was under no active treatment for her shoulder and surgery was not recommended. As the records of Dr. Chudik and Petitioner's testimony show, she has not

returned to baseline. Further, the Arbitrator finds Dr. Forsythe's opinions lacking, in that he did not comment on the propriety of the proposed surgery, regardless of causation.

In conclusion, Petitioner's current condition of ill-being regarding her right shoulder and cervical radiculopathy is causally related to the March 7, 2025 work injury, as the work injury was a causative factor in Petitioner's condition of ill-being.

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:

The Parties agreed that Respondent would be entitled to a §8(j) credit for awarded bills that were paid by its group carrier and would also, therefore have §8(j) hold harmless obligations to Petitioner regarding same. Respondent agreed to liability for bills incurred through July 29, 2025.

The services rendered to Petitioner are found to be reasonable and necessary to cure or relieve the effects of the work injury, in accordance with Section 8(a) of the Act.

The submitted bills are from IBJI (DOS: 11/3/2025, $205.00) AND South Shore Hospital (DOS: 3/7/2025, $1,643.00 and $1,247.00. The same are awarded, subject to the Medical Fee Schedule, in accordance with Sections 8(a) and 8.2 of the Act and subject to the Parties' Section 8(j) agreement, above. Respondent is entitled to a credit for all awarded bills that it has paid or compromised.

Accordingly, Respondent shall pay reasonable and necessary medical services, pursuant to the Medical Fee Schedule of $3,095.00, as provided in Sections 8(a) and 8.2 of the Act, subject to the above.

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

Based upon the Arbitrator's findings above on the issues of accident and causal connection, Respondent shall authorize and pay for the right shoulder arthroscopic rotator cuff repair with possible open biceps tenodesis and cervical spine MRI and spinal consult as offered by Dr. Chudik, along with all related services, pursuant to Sections 8(a) and 8.2 of the Act.

Regarding Issue L, whether Petitioner is entitled to TTD benefits, the Arbitrator finds:

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 (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, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner is not at MMI and has been authorized off work as a bus operator by Dr. Chudik, pending shoulder surgery, and the cervical MRI and spine consult since the April 16, 2025 visit. Petitioner has not returned to work since being authorized off work by Dr. Chudik.

Petitioner claimed that she was entitled to TTD benefits from April 18, 2025 through November 19, 2025. Respondent claimed that the TTD time period was April 18, 2025 through July 29, 2025. (ArbX 1).

Based upon the Arbitrator's findings on the issues of accident, causation and prospective medical treatment, above, Respondent shall pay Petitioner temporary total disability benefits of $1,113.08/week for 30-6/7 weeks, commencing April 18, 2025 through November 19, 2025, pursuant to Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC020130
Case Name	Ciro Carillo v. United Rentals, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0304
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Aaron Bryant
Respondent Attorney	Shawn Biery

DATE FILED: 10/29/2026

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ciro Carillo,

Petitioner,

vs. No. 23 WC 20130

United Rentals, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the last paragraph on page 16 of the addendum to the Arbitration Decision ("Attachment to Arbitration Decision"), the Arbitrator stated that Petitioner offered into evidence the unpaid medical bills of Hinsdale Orthopedics from, "7/28/23 through 11/6/2." The Commission corrects that date range to be, "7/28/23 through 11/6/25."

Also, in the second paragraph on page 17 of the Attachment to Arbitration Decision, the Petitioner's date of accident was incorrectly stated as, "July 11, 2025." The Commission corrects that date to, "July 11, 2023."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2026, is hereby affirmed and adopted as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that all bills for reasonable and necessary medical services which the Arbitrator ordered Respondent pay, including but not limited to those from Modern Pain Consultants, shall be paid pursuant to the fee schedule and as provided in §8(a) and 8.2 of the Act.

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

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

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

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

OCTOBER 29 2026

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-10/22/26
068

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC020130
Case Name	Ciro Carillo v. United Rentals, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Aaron Bryant
Respondent Attorney	Shawn Biery

DATE FILED: 4/3/2026

/s/ Joseph Amarilio, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 31 2026 3.61%

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)

CIRO CARILLO
Employee/Petitioner

v.

UNITED RENTALS, INC.
Employer/Respondent

Case # **23** WC **020130**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was electronically mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago,** on **December 18, 2025 and February 20, 2026**.. 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

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

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

O. ☒ Other: Whether Petitioner has reached maximum medical improvement

FINDINGS

On the date of accident, **July 11, 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 $**86,463.00**; the average weekly wage was $**1,779.99**.

On the date of accident, Petitioner was **49** 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 $**113,237.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**113,237.57**.

By stipulation of the parties, Respondent is entitled to a credit for any payments made under Section 8(j) of the Act 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.

ORDER

DISPUTED ISSUE F: The Arbitrator finds that Petitioner's current condition of ill-being to his neck at C4-5 and C5-6 with cervical radiculopathy and post-concussion syndrome are causally related to the July 11, 2023 injury.

DISPUTED ISSUE J: Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule to Illinois Bone & Joint Physical Therapy in the amount of $8,288.29; Hinsdale Orthopedics Bills in the amount of $4,129.00; Modern Pain Consultants Bills in the amount of $70,501.13; American Surgical Associates LLC Bills in the amount of $86,131.99 and $128,863.00 ; and. IWP Pharmacy in the amount of $7,280.80, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for medical bills previously paid,

DISPUTED ISSUE K: The Arbitrator finds that Petitioner is entitled to prospective medical care. Respondent shall authorize and pay for Petitioner's C4-5 and C5-6 discectomy and fusion surgery and necessary pre-operative and post-operative care as prescribed by Dr. Darwish pursuant to the fee schedule and as provided in Section 8(a) and 8.2 of the Act.

DISPUTED ISSUE L: Respondent shall pay Petitioner temporary total disability benefits of $1,186.67 per week for 127-2/7th weeks, commencing 07/12/2023 through 12/18/2025, as provided in Section 8(b) of the Act representing $151,046.14. Respondent is entitled to credit for prior payments to Petitioner.

DISPUTED ISSUE O: The Arbitrator finds that Petitioner has not reached maximum medical improvement.

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

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

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

/s/ *Joseph D. Amarilio*

APRIL 3 2026

Signature of Arbitrator JOSEPH D. AMARILIO

ATTACHMENT TO ARBITRATION DECISION

I. INTRODUCITON

Mr. Ciro Carillo (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act"), 820 ILCS 305/1 *et seq.* Petitioner claimed that on July 11, 2023, he sustained accidental injuries arising out of and in the course of his employment with United Rentals, Inc. (Respondent). A hearing proceeded on December 18, 2025 and February 20, 2026 pursuant to Section 19(b) of the Act. Petitioner testified on his own behalf. Dr. Ashraf Darwish, testified by evidence deposition at Petitioner's request and Dr. Andrew Zelby testified by evidence deposition on behalf of Respondent. The parties mutually requested a written decision, including findings of fact and conclusions of law. (Arb Ex. 1),

II. FINDINGS OF FACT

Petitioner's Testimony

On the morning of July 11, 2023, Petitioner, in the course of his employment as a truck driver for United Rentals, parked his flatbed truck at the intersection of 63rd and California in Chicago, Illinois. (Tr. p. 15). While stepping out of the cab, a passing vehicle collided with his door, sending it slamming into the back of Petitioner's head and propelling him back into the cab. (Tr. p. 16). The impact drove Petitioner headfirst into the seat, where his jaw struck the cushion first, producing an audible pop in his neck. (Tr. P. 16-17). The police were called to the scene and Petitioner notified Respondent of the accident. He felt pain in his neck and into his shoulders and did not work the remainder of the day. (Tr. P. 18).

The following day, July 12, 2023, Petitioner's wife transported him to Respondent's medical clinic of choice SCT Clinic in Broadview. Petitioner reported headaches, dizziness, light sensitivity, neck pain, and pain radiating into his left shoulder. The clinic physician imposed a 10-pound lifting restriction, instructed Petitioner not to drive, and prescribed pain medication. (Tr. P. 44; Tr. p. 18-20).

Petitioner's condition worsened over the following days, with increasing pain and an inability to sleep. On July 17, 2023, he sought treatment at Hinsdale Orthopedics Immediate Care, where X-rays were taken. The physician there directed Petitioner to go to an emergency room to rule out a fractured vertebra. Petitioner went directly to LaGrange Hospital's emergency room, where CT scans were performed and returned negative for fractures. The emergency room physicians prescribed pain medication and muscle relaxers and referred Petitioner to neurologist Dr. Zeina Rabi for evaluation and treatment of his concussion. (Tr. p. 23).

On July 28, 2023, Petitioner returned to Hinsdale Orthopedics on July 28, 2023, where he was seen by Dr. Ashraf Darwish,, an orthopedic spine surgeon, and reported neck pain radiating into his shoulders with headaches and dizziness. Dr. Darwish recommended physical therapy, ordered a cervical MRI and restricted him work. (Tr. p. 24-25).

On August 9, 2023, Petitioner underwent a cervical MRI at Hinsdale Orthopedics, which revealed multiple herniated discs. Dr. Darwish subsequently referred Petitioner to Dr. Farooq Khan at Modern Pain Consultants for pain management. (Tr. p. 26).

Petitioner presented to Dr. Khan in September 2023, at which time Dr. Khan recommended a cervical epidural steroid injection. The injection was administered in December 2023 and provided Petitioner with temporary relief of his neck symptoms. (Tr. p. 27). Concurrently, Petitioner participated in physical therapy for his neck through Illinois Bone and Joint, beginning in the summer of 2023 and continuing through the fall of that year. (Tr. p. 27).

At his follow-up appointment with Dr. Khan on January 19, 2024, Petitioner reported mild improvement following the injection, and Dr. Khan recommended proceeding with a second injection. (Tr. P. 28). On February 12, 2024, Petitioner followed up with Dr. Rabia regarding his ongoing concussion symptoms. Dr. Rabia prescribed Sumatriptan for the treatment of migraines and cluster headaches, as well as Qulipta for headache prevention. (Tr. p. 28).

Petitioner continued to follow up with Dr. Darwish with similar complaints of neck pain that went into his shoulders and into his arms. Dr. Darwish agreed with Dr. Khan regarding the second epidural injection. Dr. Khan performed the injection on February 29, 2024. (Tr. p. 29). Petitioner continued to be held off from work by both Dr. Darwish and Dr. Khan in February and March, 2024. Dr. Khan recommended a third cervical injection at the March 29, 2024 visit. (Tr. p. 30-31).

Respondent did not promptly approve Petitioner's third cervical injection, and throughout the spring and summer of 2024, Petitioner continued to present to Dr. Darwish with persistent complaints of neck pain radiating into his shoulders and arms. Respondent ultimately approved the third injection, which Dr. Khan performed on August 15, 2024. (Tr. p. 31).

On August 22, 2024, Petitioner followed up with Dr. Darwish, who ordered an updated cervical MRI. The MRI was performed on September 4, 2024, and at a follow-up appointment on September 24, 2024, Dr. Darwish reviewed the results with Petitioner and recommended a two-level cervical fusion. (Tr. p. 31-32).

Petitioner subsequently followed up with Dr. Khan, who recommended an additional cervical injection. The injection was administered on December 12, 2024, and again provided Petitioner with temporary relief. (Tr. p. 32). At a follow-up visit on January 4, 2025, Dr. Khan recommended that Petitioner resume physical therapy. Petitioner attended physical therapy at Illinois Bone & Joint from January 24, 2025, through April 17, 2025, which afforded him some symptomatic improvement. (Tr. p. 33).

At a visit on March 28, 2025, Dr. Khan recommended a cervical medial nerve branch block and placed Petitioner on light duty restrictions. Respondent, however, failed to accommodate Petitioner with light duty work. Despite Petitioner's request to return to work within the parameters of his physician's restrictions, Respondent has yet to provide him with suitable light duty employment. (Tr. p. 35).

Petitioner underwent the medial nerve branch block on June 27, 2025, which yielded only approximately four hours of relief. Petitioner returned to Dr. Khan on July 28, 2025, continuing to report neck pain radiating into his shoulders and arms. Dr. Khan recommended that Petitioner proceed with a radiofrequency ablation procedure ("RFA"). (Tr. p. 35-36).

Petitioner returned to Dr. Darwish on November 6, 2025, at which time Dr. Darwish concurred with Dr. Khan's recommendation that Petitioner undergo the RFA and continued him on light duty restrictions. The RFA was performed on November 12, 2025, and afforded Petitioner modest relief.

(Tr. p. 37). Petitioner is currently managing his pain with Gabapentin and lidocaine patches. (Tr. p. 38).

Petitioner wishes to proceed with the recommended fusion surgery so that he can return to work, provide for his family and be able to play with his ten-year-old son. (Tr. p. 39). With the exception of a few payments, Petitioner has not received TTD benefits since March 2025. Petitioner requests payment of the full amount owed, noting that he has complied with every recommendation made by his treating physicians since the date of the accident. (Tr. p. 39). Petitioner did not have any pain in his neck going into his shoulders and arms in the days, weeks, months and years leading up to the accident. (Tr. p. 41).

Dr. Zelby Section 12 Reports

Dr. Andrew Zelby examined Petitioner at Respondent's request on October 18, 2023 and April 12, 2024. Additionally, he generated a report dated March 6, 2025 based on additional records reviewed. (Resp. Ex. 1, pp.83-97)

In his report of October 18, 2023, Dr. Zelby opined as a result Petitioner's injury at work on July 11, 2023, Petitioner's reported complaints were consistent with post-concussion syndrome and complaints of neck pain extending into the left upper scapular region. Based on his examination of Petitioner, Dr. Zelby opined that as a result of the accident, Petitioner sustained a "1. Minimal cervical concussion (sic.) without loss of consciousness. 2. Mild post-concussion syndrome. 3. Cervical degenerative spondylosis without myelopathy or radiculopathy." (Resp. Ex. 1, p. 88). Dr. Zelby opined that the imaging studies reflected only chronic and longstanding degenerative changes in the cervical spine, with no evidence of myelopathy on examination. Dr. Zelby further opined that while the work injury could have caused a concussion and post-concussion syndrome, the minimal nature of the concussion would have produced only a mild post-concussion syndrome.

Dr. Zelby believed that Petitioner did not require any specific ongoing treatment for his concussion and post-concussion syndrome, and that based on the objective medical findings, these symptoms would be expected to resolve within approximately one month, given that Petitioner was four months post-injury at the time of the evaluation; an outcome consistent with the typical course of the type of concussion and post-concussion syndrome he sustained.

With respect to the cervical spine, Dr. Zelby believed that a trial of one to two cervical epidural steroid injections would be reasonable, necessary, and causally related to the reported work injury. However, given the absence of radiculopathy or myelopathy symptoms, as well as the absence of corresponding findings on examination, Dr. Zelby found no basis to conclude that surgery was necessary or likely to become necessary for Petitioner's cervical degenerative condition as a result of the July 11, 2023 work injury or any sequelae thereof.

Dr. Zelby further opined that Petitioner was not capable of returning to full-duty work at that time, but could work with restrictions limiting lifting to no more than ten pounds and requiring ground-level work only. These restrictions were not expected to be permanent, and Dr. Zelby opined that based on the objective medical findings, Petitioner would be able to return to full-duty work without restrictions within the following few months. (Resp. Ex. 1, p. 88).

In his April 12, 2024 report, Dr. Zelby opined that the injections were not warranted given Petitioner's inconsistent pain complaints and reported lack of significant improvement, and further opined that the

ongoing complaints appeared to be an exaggeration of his actual neurological and spinal conditions. As of April 12, 2024, Dr. Zelby found no medical basis to causally relate Petitioner's complaints to the reported July 11, 2023 work injury. (Resp. Ex. 1, pp. 90-94).

On March 6, 2025, Dr. Zelby did not examine Petitioner. Rather he examined additional updated medical records and diagnostic findings and reaffirmed his prior opinions, again finding it difficult to identify a medical basis that could corroborate the reported persistence and severity of Petitioner's symptoms in light of the objective medical evidence. Dr. Zelby reiterated that there was no medical basis to conclude that any of Petitioner's subjective complaints of headache and dizziness beyond mid-January 2024 were caused by, contributed to, or made more likely to arise from the reported July 11, 2023 work injury. Dr. Zelby further noted that while Petitioner continued to report constant neck pain, his upper extremity symptoms were intermittent and non-radicular, and his neurological examination was normal. Dr. Zelby also observed that the updated cervical MRI reflected degenerative changes most prominent at C4-5, but revealed no evidence of myelopathy or radiculopathy, a finding consistent with the absence of such signs on physical examination. Given that Petitioner's subjective complaints did not correlate with objective findings, and in the absence of myelopathy or radiculopathy, Dr. Zelby concluded there was no basis for surgical intervention and opined that Petitioner had reached maximum medical improvement with respect to any concussion and post-concussion syndrome as of mid-January 2024. (Resp. Ex. 1, pp. 95-97).

Evidence Deposition Testimony of Ashraf Darwish, M.D.

Dr. Ashraf Darwish testified by evidence deposition on June 20, 2024, June 28, 2024 with the June 28th deposition being a continuance of the June 20th and on October 2, 2025. .(P. Ex. 5, P Ex. 6, P Ex 7). Dr. Darwish is a board-certified orthopedic spine surgeon working at Illinois Bone & Joint Institute in the Hinsdale Orthopedics Division. His practice is limited to adult patients with spine conditions (P Ex. 5, p. 4-6).

Dr. Darwish stated that all of his medical opinions regarding his treatment of Petitioner were within a reasonable degree of medical certainty. (P Ex. 5, p. 8 ln. 16-20).

Dr. Darwish noted that Petitioner was first seen at Hinsdale Orthopedics on July 28, 2023, by Dr. Darwish and a physician's assistant who handled the record keeping. At that visit, a history was taken reflecting that Petitioner was a 49-year-old semi-truck driver employed by United Rentals, and that on July 11th, while delivering equipment to a job site, Petitioner was attempting to exit his truck by turning around to descend the ladder when a passing vehicle struck the door. The door struck the back of Petitioner's head, causing him to fall forward toward the front seat. Based on his examination and history, Dr. Darwish diagnosed Petitioner with cervical radiculopathy, cervicalgia, and post-concussion syndrome, and recommended a cervical MRI and physical therapy, and prescribed pain medication and muscle relaxers. (P Ex. 5, p. 13, Ln. 3-8; pp. 10-11).

Dr. Darwish opined that, based on his review of Petitioner's records and his physical examination, Petitioner sustained an injury to his cervical spine on July 11, 2024 that caused neck pain and upper extremity radiculopathy. (P Ex. 5 p. 13, Ln. 16-24). An August 9, 2023 cervical MRI revealed disc bulging at C4-5 and C5-6 causing moderate to severe foraminal narrowing on the right and moderate foraminal narrowing on the left at the C4-5 level, along with nerve root compression of both the central cord and bilaterally at the exit nerve at C4-5. (P Ex. 5 p. 15). Dr. Darwish further opined that the MRI findings were consistent with Petitioner's subjective complaints and corroborated his examination findings. (P Ex. 5 p. 16, Ln. 3-9).

With respect to his clinical examination, Dr. Darwish testified that Petitioner exhibited a positive Spurling's test; a diagnostic maneuver that reduces the cross-sectional area of the neural foramen through which the nerves exit the spine. The test is performed by having the patient look upward and rotate the head to one side while the examiner applies downward pressure to the neck; a positive result is indicated when the patient reports pain, numbness, or tingling in the arms. (P Ex. 5 p. 14, Ln. 16-23).

Following his review of the MRI and his examination of Petitioner, Dr. Darwish referred Petitioner to a pain management physician.. (P Ex. 5 p. 16, Ln. 12-15). He recommended cervical epidural injections to help relieve Petitioner's symptoms. (P Ex. 5, p. 20, Ln. 15-24; p. 21, Ln. 1-7). Dr. Darwish further testified that all of the medical treatment he provided and recommended, including the MRI, medications, physical therapy, and cervical injections , constituted reasonable and necessary medical treatment causally related to the July 11, 2023 work accident. (P Ex. 5, p. 24, Ln. 2-7).

Dr. Darwish disagreed Dr. Zelby's opinions. Dr. Darwish opined that Petitioner presented with baseline degenerative changes that were asymptomatic prior to the accident and were subsequently exacerbated or aggravated by the injury, rendering them symptomatic. Dr. Darwish clarified that his treating records reflected no complaints of neck pain prior to the accident, and that Petitioner's neck pain arose following the accident and progressively worsened thereafter. (P Ex. 5, p. 27-28).

Dr. Darwish took issue with Dr. Zelby's opinion that Petitioner did not suffer from radiculopathy, testifying that the positive Spurling's maneuver, combined with Petitioner's reported pain, numbness, and weakness radiating into his shoulders, collectively constituted evidence of radiculopathy. (P Ex. 5, p. 32).At his first deposition on June 20, 2024, Dr. Darwish testified that the recommended third epidural injection , which Respondent had denied, was reasonable, necessary, and causally related to the July 11, 2023 work accident. (P Ex. 5, p. 31, Ln. 18-22).Dr. Darwish further opined that, given Petitioner's diagnosis, symptoms, and MRI results as of June 28, 2024, Petitioner should not return to work as a truck driver. (P Ex. 6, p. 19, Ln. 3-24; p. 20, Ln. 1-3).

Dr. Darwish explanted that a normal CT scan did not alter his opinion regarding Petitioner's diagnosis, explaining that a CT scan is limited to ruling out fractures and dislocations of the spine. The MRI findings, by contrast, revealed foraminal narrowing in the cervical spine, consistent with an aggravation of a degenerative condition and the cause of Petitioner's current condition of ill-being. (P Ex. 6, p. 20, Ln. 16-24; p. 21, Ln. 1-10).

Dr. Darwish noted that when Petitioner returned to his care following Respondent's approval of the cervical injection, Petitioner reported some relief but continued to experience radicular symptoms, including burning pain radiating into the shoulders and arms. Dr. Darwish ordered an updated cervical MRI. (P Ex. 7, p. 9-10). Based on the updated findings, Dr. Darwish recommended a C4-5, C5-6 anterior cervical discectomy and fusion, testifying that this surgical recommendation constituted reasonable and necessary treatment causally related to the July 11, 2023 work accident. (P Ex. 7, p. 11, Ln. 8-24).

Dr. Darwish opined that the facet joint injections and RFAs, which Respondent approved, constituted reasonable and necessary medical treatment causally related to the July 11, 2023 work accident. (P Ex. 7, p. 17 ln 2-16). He opined that a discectomy and fusion surgery would address Petitioner's upper extremity symptoms, interscapular pain, arm numbness and tingling, and potentially improve shoulder weakness. He further explained that the surgery would stabilize the affected segment by eliminating

facet joint movement and removing the pain-generating disc, thereby relieving Petitioner's neck pain. (P Ex. 7, p. 18 ln 7-19).
Dr. Darwish opined that Petitioner's current condition of ill-being was causally related to the July 11, 2023 work accident. (P Ex. 7, p. 18 ln 20-24).Dr. Darwish noted that Petitioner presented with cervical radicular symptoms at his initial examination, with radiculopathy confirmed by a positive Spurling's maneuver. He explained that this clinical test, which predates modern imaging, is used to identify the source of upper extremity symptoms and, when positive, indicates irritation or compression of the cervical nerve roots. (P Ex. 7, p. 18 ln 7-19).

Dr. Darwish opined that the September 2024 MRI findings were consistent with Petitioner's subjective complaints, revealing moderate to severe foraminal stenosis, a narrowing of the spaces through which the cervical nerve roots exit , which can result in nerve irritation. He further noted that Petitioner's physical examination corroborated both the reported symptoms and the imaging findings, as neck pain and upper extremity radicular symptoms were exacerbated by the Spurling's maneuver, and mild deltoid weakness corresponded to the nerve root exiting at the C4-5 level. (P Ex. 7, p. 10 ln 10-24; p. 11 ln 1-7). Furthermore, Dr. Darwish noted that two independent radiologists agreed with his interpretation of the MRI scans. (P Ex. 7, p. 20).

Evidence Deposition Testimony of Dr. Zelby

Dr. Zelby testimony on direct examination was consistent with the findings and conclusions contained in his three Section 12 reports. (R Ex 1). Dr Zelby acknowledged that Petitioner injured his neck and head as a result of the July 11, 2023 work accident and required epidural steroid injections as reasonable and necessary medical treatment. (R Ex. 1, p. 37, ln 2-12). Dr. Zelby noted that when he examined Petitioner, he complained of neck pain, which radiated into both arms. (R Ex. 1 p. 36 ln. 20-24; p. 37 ln. 1; p. 37, ln 17-24; p. 38 ln. 1). However, Dr. Zelby testified that Petitioner did not have radicular symptoms despite being shown medical records from Hinsdale Orthopedic walk-in clinic, LaGrange Hospital, Dr. Darwish and Dr. Khan, which all contained histories from the Petitioner complaining of neck pain shooting into his shoulders and arms, arm weakness and numbness in both arms. (R Ex. 1 p. 43-45). Dr. Zelby insisted that Petitioner's radicular symptoms did not coincide with the disc herniations and foraminal stenosis at C4-5 and C5-6 because he was adamant that Petitioners symptoms in the shoulder would be triggered by C3-4 not C4-5 and C5-6. (R Ex. 1 p. 51, ln 1-17).

Dr. Zelby testified regarding the neurological implications of foraminal narrowing at the C4-C5 level. On the question of whether the C4-C5 level innervates the shoulder, he explained that while the nerve passes across the shoulder, it does not terminate there but continues down the arm. More specifically, the C4-C5 level involves the C5 nerve root, which extends along the anterior and anterolateral aspect of the arm, often continuing into the forearm. (R Ex. 1 p. 57, ln 7-23).When pressed on whether foraminal narrowing at C4-C5 could cause pain at the tops of the shoulders, Dr. Zelby acknowledged that it could, in part, emphasized that a dermatome follows the full path of the nerve and cannot be selectively limited to the shoulder. (R Ex. 1 p. 58, ln 2-10)..

Turning to whether the severe foraminal narrowing observed on the Petitioner's MRIs constituted objective evidence supporting his complaints since the date of the accident, Dr. Zelby disagreed. While conceding that the C5 nerve root does travel in part over the top of the shoulder, the witness stressed that it continues along the remainder of the C5 dermatome — a distribution that, in the Petitioner's case, was not consistent with his reported symptoms. On that basis, Dr. Zelby concluded that Petitioner's shoulder complaints did not represent true radicular pain. In response to the medical

records reflecting that Petitioner had also complained of weakness and numbness in his arms, Dr. Zelby responded that subjective pain complaints alone do not establish a radiculopathy, and that such complaints must be correlated with both imaging findings and physical examination results.

However, Dr. Zelby conceded that the imaging showed moderate to severe foraminal narrowing at C4-C5, combined with Petitioner's reported shoulder pain, arm weakness, and numbness complaints documented by the treating physicians supported the finding of radicular pain, Dr. Zelby took issue with whether the finding of radicular pin were made by physicians or physician assistants, or two versus three physicians. (R Ex. 1 pp 57.-58) After a brief exchange over the number of doctors involved in the finding of radiculophay, Dr. Zelby conceded the point of three physicians opining that Petitioner did have radicular pain with a dismissive "whatever, okay." (R Ex. 1 p. 58, ln 2-10).

Summary of Medical Records with Exhibits

Petitioner was sent by Respondent to the SCT medical clinic on July 12, 2023, where he reported left-sided neck pain, left shoulder pain, headaches, and dizziness. Examination revealed tenderness and loss of range of motion in the neck. The doctor diagnosed Petitioner with a whiplash injury and concussion. The doctor recommended use of a soft neck collar, prescribed pain medication, and held him off work for one week. (P. Ex. 1).

Petitioner's symptoms worsened, and he sought treatment at Hinsdale Orthopedics walk-in clinic on July 17, 2023, where he reported left shoulder and neck pain. He reported that he was in his parked truck when an oncoming car struck his door, causing the door to hit him and throw him back into the seat. He struck his chin on the seat. He felt a pop in the back of his neck, along with tightness and a burning sensation into his shoulder. He described the pain as sharp and burning into his shoulders. X-rays were taken, and he was directed to go to LaGrange Hospital to rule out a possible cervical fracture. (P. Ex. 3, p. 205).

Petitioner went to the emergency room at LaGrange Hospital on July 18, 2023. X-rays showed possible C6 and C7 vertebral fractures. He reported that seven days prior he had been involved in an accident in which he was getting out of a truck when a car struck his door. The door struck him in the head and launched him back into the truck. He hit the seat and hyperextended his neck. He felt a pop in his neck and sudden pain in his left trapezius. He soon began experiencing headaches, which had continued since then. For the first three days, he had some blurring of vision, which was now intermittent. His examination revealed cervical tenderness and bilateral upper extremity weakness. A cervical CT scan did not reveal any fractures. The doctors diagnosed Petitioner with post-concussion syndrome, headache, and neck pain. The doctors prescribed Norco and muscle relaxers and advised him to follow up with the work clinic as planned. (P. Ex. 2a, pp. 30–32).

Petitioner followed up with orthopedic surgeon Ashraf Darwish at Hinsdale Orthopedics on July 28, 2023, where he reported the work accident. He reported that since the injury, he had experienced increased neck pain, bilateral periscapular pain, and on-and-off weakness in the upper extremities. He continued to complain of neck pain with bilateral periscapular pain radiating into the left shoulder. Examination revealed tenderness to palpation over the bilateral trapezius, bilateral periscapular, and right and left paraspinal muscles. No tenderness was present over the spinous process, interscapular region, upper cervical, lower cervical, right scapular region, left scapular region, or interscapular region. A left Spurling's test was positive. Dr. Darwish concluded that, based on the temporal timing of the symptoms following the mechanism of injury, it is within a reasonable degree of medical certainty that the patient's current condition is causally related to the work-related injury as described

previously. He recommended that Petitioner undergo a cervical MRI, begin physical therapy, and remain off work. (P. Ex. 3, pp. 181–184). Petitioner began physical therapy for his cervical spine at Illinois Bone & Joint Institute on August 1, 2023. (P. Ex. 3).
Petitioner underwent a cervical MRI at Hinsdale Orthopedics on August 9, 2023, which revealed C3–C4 disc bulging and spondylotic spurring to the right with mild to moderate right foraminal narrowing; C4–C5 facet arthropathy with lateralizing spondylosis and disc bulging with moderately severe right and moderate left foraminal narrowing; C5–C6 facet arthropathy and disc bulging with mild to moderate right foraminal narrowing; and C6–C7 central disc bulging with mild to moderate central canal narrowing and mild bilateral foraminal narrowing. (P. Ex. 3, p. 171).

Petitioner returned to Dr. Darwish on August 29, 2023, and reported continued complaints of neck pain and bilateral trapezius and periscapular pain. He continued to experience bilateral upper extremity weakness and reported slight improvement from physical therapy. Dr. Darwish reviewed the cervical MRI, which revealed disc herniations at C3–C4 and C4–C5 causing Petitioner's neck and radicular symptoms. Dr. Darwish referred Petitioner to a pain management physician, continued physical therapy, and prescribed a TENS unit. (P. Ex. 3, pp. 158–161).

Petitioner saw Farooq Khan, M.D., at Modern Pain Consultants on September 7, 2023, and reported cervical pain, bilateral upper extremity pain, bilateral shoulder pain, upper back myofascial pain, and headaches. Examination revealed moderate facet joint tenderness bilaterally at C6–C7 and C7–T1, and mild tenderness at C4–C5 and C5–C6. Dr. Khan diagnosed Petitioner with cervicalgia and cervical radiculopathy and recommended an epidural steroid injection. (P. Ex. 4, pp. 1–6). Petitioner underwent a MRI of the brain at LaGrange Hospital on September 28, 2023, which did not reveal any abnormalities. (P. Ex. 2b).

Petitioner presented to Dr. Andrew Zelby, a neurosurgeon, for a Section 12 examination at Respondent's request on October 18, 2023. Dr. Zelby concluded that cervical epidural injections were reasonable medical treatment related to the work injury. (R. Ex. 1, p. 88).

Petitioner saw neurologist Zeina Rabia, M.D., for his concussion symptoms on November 7, 2023, and reported chronic daily migraines after sustaining a head injury at work. Dr. Rabia prescribed a Medrol Dose Pack and Sumatriptan. (P. Ex. 2c, pp. 1–6).

Petitioner was seen by Dr. Darwish on October 12 and November 28, 2023, and reported continued neck pain with radicular symptoms into the shoulders. Dr. Darwish recommended he undergo the cervical injection, continue physical therapy, and remain off work. (P Ex. 3 pp. 116-121 and 107-112). The epidural steroid injection was approved by the Respondent and was performed by Dr. Khan on December 20, 2023. (P Ex. 4 pp. 7-11).

Petitioner returned to Dr. Darwish on January 4 and February 15, 2024, and reported some relief from the epidural injection but continued posterior neck pain, right trapezius pain, and intermittent pain that radiates into his left upper extremity that feels like "electric shocks." Dr. Darwish recommended he undergo a second cervical injection, continue physical therapy, and remain off work. (P Ex. 3 pp. 61-68 and 86-91).

Dr. Khan performed the second cervical injection on Petitioner on February 29, 2024. (P Ex. 4 pp. 13-23). Petitioner returned to Dr. Khan on March 29, April 24, May 22, June 19, and July 10, 2024, and reported improvement from the second injection but had continued neck pain that radiates to both shoulders. He stated the radiating upper extremity pain improved more significantly on the right side

than the left side, but continues in the extremities with repetitive activity, lifting, carrying, and reaching. He continues to experience intermittent occipital headaches. Dr. Khan prescribed pain medication and muscle relaxers and recommended a third cervical injection during each of these visits. Dr. Khan also kept Petitioner off work. (P Ex. 4 pp. 24-42).
Petitioner returned to Dr. Darwish on April 11, 2024, and reported some relief from the second epidural injection. He continued to have neck pain radiating into both upper extremities. Dr. Darwish recommended a third cervical injection, continued physical therapy, and that he remain off work. (P Ex. 3 pp. 23-29). Petitioner completed physical therapy at Illinois Bone & Joint on April 24, 2024. (P Ex. 3). Petitioner returned to Dr. Darwish on May 30 and July 11, 2024, and reported continued neck pain with burning into both shoulders, most severe on the left. Dr. Darwish agreed with a third cervical injection and that he remain off work. (P Ex. 3 pp. 390-406).

The third cervical epidural steroid injection was approved by Respondent and performed on August 15, 2024. (P Ex. 4 pp. 47-52). Petitioner returned to Dr. Darwish on August 22, 2024, and reported slight relief from the third epidural injection but noted that physical therapy had not resumed since it had not been approved by Respondent. Dr. Darwish recommended an updated MRI for surgical evaluation and light duty work. (P Ex. 3 pp. 382-386). Petitioner underwent a cervical MRI at Illinois Bone & Joint Institute on September 4, 2024. (P Ex. 3 p. 366). Petitioner returned to Dr. Darwish on September 24, 2024, and discussed the disc herniations at C4-5 and C5-6 found on the MRI. Due to continued neck pain with radicular symptoms that failed conservative treatment, Dr. Darwish recommended a discectomy and fusion surgery at C4-5 and C5-6. Dr. Darwish noted that Petitioner's current condition and need for treatment was causally related to his work injury and recommended light duty work. (P Ex. 3 pp. 353-357).

Petitioner returned to Dr. Khan on October 3, 2024, and reported continued neck pain radiating into his left shoulder with intermittent burning. Dr. Khan prescribed Tramadol 50 mg BID, Lidocaine patches, and Diclofenac topical. He also recommended an epidural injection at C4-5. (P Ex. 4 pp. 57-61). The epidural steroid injection at C4-5 was approved by Respondent and performed on December 12, 2024. (P Ex. 4 pp. 66-72). Petitioner underwent physical therapy at Illinois Bone & Joint from January 24, 2025 through April 17, 2025. (P Ex. 3).

Petitioner returned to Dr. Darwish on February 13 and April 10, 2025, and reported continued neck pain radiating into both upper extremities, with numbness and tingling. Dr. Darwish recommended physical therapy pending approval of the cervical fusion. (P Ex. 3 pp. 412-420).

Petitioner returned to Dr. Khan on January 3, January 31, February 28, and March 28, 2025, and reported neck pain radiating to his left shoulder with constant burning. Dr. Khan prescribed Tramadol, Lidocaine patches, and Diclofenac topical for pain relief and recommended a medial nerve branch block from C3-C4 to C5-C6. (P Ex. 4 pp. 73-96).

Petitioner returned to Dr. Darwish on May 27, 2025, and reported continued neck pain radiating into both upper extremities, with numbness and tingling. Dr. Darwish agreed with Dr. Khan's recommendation for the medial nerve branch block (facet joint injections) and concluded that Petitioner should remain off work. (P Ex. 3 pp. 421-428). Respondent approved the cervical medial branch block, which Dr. Khan performed on June 27, 2025. Petitioner followed up with Dr. Khan on July 28, 2025, and complained of neck pain radiating into the left shoulder. Dr. Khan prescribed Tramadol, Lidocaine patches, and Diclofenac topical for pain relief and recommended a second medial nerve branch block. (P Ex. 4 pp. 96-100). Petitioner returned to Dr. Darwish on July 17, 2025, and reported only a few hours of relief following the facet joint injections. He continued to have neck pain

radiating into the left shoulder with a burning sensation into the forearm and hand. Dr. Darwish continued to recommend cervical fusion surgery. (P Ex. 3 pp. 434-437).

Petitioner returned to Dr. Khan on August 25, 2025, and reported neck pain that radiates to his left shoulder with constant burning. Dr. Khan prescribed Tramadol 50 mg BID, Lidocaine patches, and Diclofenac topical for pain relief and recommended a cervical Radiofrequency Ablation ("RFA") procedure. (P Ex. 4 pp. 101-104).

Petitioner returned to Dr. Darwish on September 11, 2025, and reported continued neck pain with burning that radiates into the left shoulder, forearm, and hand. Dr. Darwish agreed with the RFA procedure and continued to recommend the cervical fusion surgery. (P Ex. 3 pp. 430-433).
Respondent approved the RFA and Dr. Khan performed the procedure on November 12, 2025. (P Ex. 4 pp. 101-110).

Petitioner returned to Dr. Darwish on November 6, 2025, and reported continued neck pain that radiates into the shoulder, forearm, and hand. Dr. Darwish recommended the RFA and continued to recommend the cervical fusion surgery. Dr. Darwish recommended Petitioner remain off work and prescribed Zylotrol patches for pain relief. (P Ex. 3 pp. 443-447).

Petitioner followed up with Dr. Khan on December 22 and January 19, 2026, and reported relief following the RFA. He reported neck pain that occasionally radiates to his left shoulder, described as intermittent with mild burning. Dr. Khan recommended a second RFA and that Petitioner remain off work pending approval for surgery. (P Ex. 3 pp. 110-119).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(d) of the Act provides that, to obtain compensation under the Act, Petitioner bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. 820 ILCS 305/1(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980). And yet, it also is well established that the Act is humane law of remedial nature and is to be liberally construed to affect the purpose of the Act that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals who misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Commission*, 2 Ill. 2d 590, 603 (1954). The Act should be liberally construed to provide financial protection for injured workers. *McAllister v. Illinois Workers' Compensation Commission,* 2020 IL 124848. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission*, 52 Ill. 2d 158, 165 (1972). Workers are entitled to "prompt, sure and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such industries," rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill. 2d 167, 174 (1956). Decisions of an arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed.

Credibility Finding: The Arbitrator, as a 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. The Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was honest, forthright, and direct during 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. The Arbitrator finds that Petitioner presented as an unsophisticated witness, and any inconsistencies identified in his testimony and records were neither material nor made with deceptive intent.

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

In a workers' compensation claim, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010). A preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470 (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193 (2003).

It has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id*. at 64. An employer takes its employees as it finds them. *St. Elizabeth Hospital v Worker's Compensation Comm'n*, 371 Ill. App 3d 882, 888 (2007). That Petitioner had a pre-existing condition does not preclude the use of a chain of events analysis. *Schroeder v Illinois Worker's Compensation Commission*, 2017 Ill. App.(4th) 160192 WC (2017); *Corn Belt Energy Corp. v Illinois Worker's Compensation Commission,* 2016 Ill. App (3d) 150311 WC.

The Arbitrator also finds the case of *Tazewell County v. Illinois Workers' Compensation Comm'n IWCC* (Dora Potts) 2025 IL App (4th) 230754WC, a case of first impression, to be instructive. The *Tazwell* Court held that work activity that results solely in pain from a preexisting non-work-related condition is compensable under the Act in the absence of a concomitant worsening of the underlying non-work-related condition. If the aggravation is work-related and solely causes pain, the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition. The Court held that pain by itself is a compensable condition under the Act. The Court further held that an

aggravation or acceleration of a preexisting condition caused by work-related activity is compensable even in the absence of an organic or structural change in the preexisting condition.

The Arbitrator finds that the record shows that the accident aggravated Petitioner's preexisting asymptomatic cervical degenerative disc disease, leading to injury, treatment, and the need for surgery. There is no persuasive evidence presented of intervening or subsequent injuries to the neck that could explain Petitioner's injuries and current condition. The medical histories in the record demonstrate a consistent history as to the onset of Petitioner's undisputed neck injury being on July 11, 2023, histories that correlate with Petitioner's testimony. Since the accident, Petitioner has been in pain; pain of such severity that he is willing to undergo a cervical fusion surgery to obtain relief.

The Arbitrator has carefully reviewed and considered all the medical evidence along with all the testimony and finds that Petitioner has proven by a preponderance of the credible and persuasive evidence that his work-related injury aggravated and accelerated his pre-existing asymptomatic cervical degenerative disease such that his current condition of ill-being can be said to have been causally connected to his work-related injury and not simply the result of a normal degenerative process of the pre-existing condition..

The Arbitrator notes that Respondent does not dispute accident. There is unrebutted evidence that before his July 11, 2023 accident, Petitioner performed full duty and no evidence was introduced that Petitioner was unable to perform his duties before the accident or that he performed his duties with neck pain. It is further undisputed that after the accident, Petitioner has been authorized off work or limited to restricted duty work while waiting to undergo the prescribed neck surgery after conservative medical care failed. Dr. Zelby, however, opined that Petitioner would be able to return to full-duty work without restrictions within a few months following his April 12, 2024 Section 12 examination.

The Arbitrator notes that Dr. Zelby acknowledged Petitioner sustained a concussion and cervical injury from the July 11, 2023 accident. Dr. Zelby did not disagree that the mechanism of injury is sufficient to aggravate Petitioner's pre-existing cervical condition. However, Dr. Zelby disagreed with the treating physicians regarding the nature, extent and duration of the cervical injury. The Arbitrator, for various reasons noted below, does not find Dr. Zelby's opinions persuasive.

Upon reviewing the totality of the evidence in the record, and giving weight to the credible testimony of Petitioner and the persuasive opinions of Dr. Darwish, the Arbitrator concludes that based on the chain of events Petitioner's current conditions of ill-being are causally connected to the workplace accident of July 11, 2023. Dr. Darwish opined that, following his review of the medical records and physical examination of Petitioner, the herniated discs at C4-5 and C5-6, manifested as neck pain and cervical radiculopathy, were aggravated by the July 11, 2023 work accident. (Ex. 5, p. 13, ln. 16-24). More specifically, Dr. Darwish explained that Petitioner had pre-existing, asymptomatic cervical degenerative changes that were exacerbated or aggravated by the work injury, rendering them

symptomatic. (Ex. 5, p. 27-28). In reaching this conclusion, Dr. Darwish relied upon the following four factors:

First, Petitioner was asymptomatic prior to the accident. Second, radiculopathy was confirmed by Petitioner's repeated positive Spurling's maneuver. Dr. Darwish testified that this clinical test, which predates modern imaging, is used to identify the source of upper extremity symptoms, and that a positive result indicates irritation or compression of the cervical nerve roots. (Ex. 7, p. 18, ln. 7-19). Third, Petitioner reported subjective complaints of neck pain radiating into both shoulders and arms, accompanied by shoulder weakness and numbness and tingling in the upper extremities. (Ex. 7, p. 10, ln. 10-24; p. 11, ln. 1-7). Fourth, Petitioner's MRI findings correlated with his subjective complaints. Dr. Darwish identified moderate to severe foraminal stenosis at C4-5 and C5-6, consistent with Petitioner's reported upper extremity symptoms. (P Ex. 7, p. 10, ln. 10-24; p. 11, ln. 1-7). His findings were verified by two independent radiologists. (P. Ex 7, p. 20).

Dr. Zelby acknowledged that Petitioner sustained a head and neck injury as a result of the accident. The foundation of Dr. Zelby's opinion denying causation and the need for surgery rests on his contention that the MRI findings do not correlate with Petitioner's complaints due to an alleged absence of radicular symptoms. However, Dr. Zelby conceded on cross-examination that the following symptoms are consistent with radiculopathy: pain radiating into the shoulder, shoulder weakness, pain radiating into the arms, and numbness and tingling radiating into the arms. (R. Ex. 1, p. 38, ln. 10-24). Notwithstanding this concession, Dr. Zelby maintained that Petitioner did not exhibit radicular symptoms, a position that is contradicted by the medical records and Dr. Darwish's testimony.

Throughout nearly two years of treatment with Dr. Darwish and Dr. Khan, Petitioner consistently reported neck pain with radiating pain into his shoulders and radiating pain and weakness in both arms. (P. Ex. 3 and 4). Both treating physicians initially diagnosed Petitioner with neck pain and cervical radiculopathy. Dr. Zelby's refusal to acknowledge the presence of radicular symptoms is directly at odds with the documented patient histories and the diagnoses rendered by Petitioner's treating physicians.

Dr. Zelby's secondary basis for denying causal connection, that the MRI findings at C4-5 and C5-6 do not correlate with Petitioner's subjective complaints, is similarly unreliable. Dr. Zelby initially testified that the C4-5 dermatome does not just affect the shoulder, but rather the arms and forearms. Upon further cross-examination, however, Dr. Zelby conceded that foraminal narrowing at C4-5 can in fact cause pain at the top of the shoulder, with symptoms continuing down both arms and into the forearms. This concession is significant, as Petitioner did in fact report pain shooting into his shoulders, along with pain, numbness, and weakness in both arms; symptoms Dr. Zelby ultimately acknowledged.

Dr. Zelby's rationale for denying causal connection of Petitioner’s current condition of ill-being is unpersuasive. Petitioner sustained no intervening accident, and his condition did not respond to conservative treatment. Dr. Zelby consistently denied the existence of radicular symptoms only to later acknowledge that the medical records documented Petitioner's reports of shoulder pain with radiation down the arms, consistent with C4-5 pathology as well as the treating physicians findings of radicular pain. Dr. Zelby's decision to disregard or discredit these documented findings undermines the reliability of his opinion. (R. Ex. 1 pp. 57-58).

The Arbitrator finds Petitioner’s testimony is consistent with the histories of present illness as documented by his treating physicians. According to Dr. Darwish, the herniated discs at C4-5 and C5-6 with cervical radiculopathy, and the resulting need for surgery, are causally related to the work

accident of July 11, 2023. The Arbitrator finds that Petitioner's current condition of herniated discs at C4-5 and C5-6 with cervical radiculopathy is causally related to the injury and recommended surgery

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

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 (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 (2001).

The Commission may order an employer to authorize prospective medical care, upon findings of 1) a causal connection between the claimant's current condition and their injuries; and 2) that the recommended treatment is reasonable and necessary to treat the injuries. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill.App.3d 705 (1997). As noted above, the Arbitrator has found that Petitioner has proven by a preponderance of the credible and persuasive evidence a causal connection between his current cervical condition and his work-related injury and that the recommended surgery is reasonable and necessary to relieve, or cure the effects of Petitioner's July 11, 2023 injury.

Dr. Zelby opined that surgery was not reasonable or necessary. This is primarily based on his belief that the Petitioner did not suffer a cervical radiculopathy as a result of the accident. Dr. Darwish was similarly consistent in his opinion that surgery is necessary to relieve the Petitioner's radicular symptoms. As stated above, the Arbitrator gives greater weight to Dr. Darwish's opinions. Dr. Darwish persuasively testified that the C4-5 and C5-6 discectomy and fusion surgery is medically reasonable and necessary to treat Petitioner's current condition of herniated discs at C4-5 and C5-6 with cervical radiculopathy and is related to Petitioner's July 11, 2023 work accident as conservative treatment only provided temporary relief. Dr. Khan agreed that surgery was warranted. Petitioner testified that he would proceed with the surgery. He deserves the right to alleviate his disabling pain and disability.

Based on the totality of the evidence and the applicable law, the Arbitrator finds that Petitioner is entitled to the prescribed prospective medical care. Therefore, Respondent is hereby ordered to authorize and pay for Petitioner's C4-5 and C5-6 discectomy and fusion surgery and necessary post-operative care as prescribed by Dr. Darwish in accordance with the fee schedule and as provided in Section 8(a) and 8.2 of the Act.

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 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 (2009). The Arbitrator finds that the medical services provided to Petitioner are reasonable and necessary and Respondent has not paid all appropriate charges. Petitioner offered into evidence five (5) sets of unpaid medical bills: Illinois Bone & Joint Physical Therapy Bills 8/1/23 through 4/17/25 in the amount of $8,288.29 (PX 8); Hinsdale Orthopedics Bills 7/28/23 through 11/6/2 in the amount of $4,129.00 (PX 9); Modern Pain Consultants Bills 9/7/23 through 1/19/26 in the amount of $70,501.13 (PX 10);

American Surgical Associates LLC Bills 9/7/23 through 1/19/26 in the amount of $86,131.99 and $128,863.00 (PX 10); IWP Pharmacy Bills 11/15/24 through 12/1/25 in the amount of $7,280.80 (PX 11).

Dr. Darwish testified, within a reasonable degree of medical and surgical certainty, that all of Petitioner's medical treatment since the accident, including physical therapy, cervical injections, medial nerve branch block, and radiofrequency ablation, was reasonable and necessary treatment, causally related to the July 11, 2025 accident. (P. Ex. 5, p. 20, ln. 15–24; p. 21, ln. 1-7) and (P. Ex. 7, p. 17, ln. 2-16). Respondent gave prior approval to the medical providers to perform the cervical injections, medial nerve branch block, and radiofrequency ablation, but the bills remain unpaid. The Arbitrator finds these bills all to be reasonable and necessary and causally related to the work injuries.

The Arbitrator awards the outstanding balance noted above for each bill. This award is made pursuant to the fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for payments previously made as documented in Respondent's Exhibit 3.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

"The period of temporary total disability encompasses a time from which the injury incapacitates the claimant until such time as the claimant is recovered as much as the character of the injury will permit, 'i.e., until the condition is stabilized." *Gallentine v. Industrial Commission*, 201 Ill. 3d 880, 886, (2nd Dist. 1990). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the workforce. *Holocker v. Illinois Workers' Compensation Comm'n* , 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017).

Petitioner has alleged entitlement to TTD benefits from July 12, 2023 through December 18, 2025. Respondent suspended TTD benefits on April 20, 2024, relying upon the opinions of Dr. Zelby. (R Ex. 3). In contrast, medical providers have consistently restricted Petitioner from full-duty work, placing him either on light-duty status or completely off work since the date of the accident. Petitioner made efforts to return to work in a light-duty capacity, however, Respondent declined to accommodate that request. (Tr. pp. 34-37). Petitioner's account in this regard is supported by the record. The record contains no evidence that Respondent ever offered Petitioner a light-duty position or otherwise attempted to facilitate his return to work within his medical restrictions.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to TTD for the period of July 12, 2023 through December 18, 2025. Accordingly, Respondent is hereby ordered to pay TTD commencing on July 12, 2023 through December 18, 2025. Respondent is entitled to a credit for TTD paid in the amount of $113,237.57. (Arb. .Ex, 1, p. 2).

WITH RESPECT TO ISSUE (O), WHETHER PETITIONER HAS REACHED MAXIMUM MEDICAL IMPROVIEMENT, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the findings and conclusions noted above, the Arbitrator finds that Petitioner has not reached maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020794
Case Name	Vince Malson v. Komatsu
Consolidated Cases	24WC033960
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0305
Number of Pages of Decision	31
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Kevin Elder
Respondent Attorney	Quinn Brennan

DATE FILED: 10/29/2026

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VINCE MALSON,

Petitioner,

vs. NO: 22WC020794

KOMATSU,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causation, medical expenses, temporary total disability benefits, and prospective 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.

While the Commission affirms the Arbitrator's ultimate denial of Petitioner's claims, the Commission is compelled to strike certain hyperbolic statements contained in the decision and modifies the Arbitrator's decision as follows.

The Commission amends Paragraph 2 on Page 24 to read: "That said, one area of Dr. Troy's testimony that can be helpful to the Petitioner generally speaking, were his opinions on the right arm tremors, as Dr. O'Leary and Dr. Bernstein had little to offer on this issue. Dr. Troy explained that the right upper extremity would not be related to the cervical spine because tremoring is a central process and not related to anything on the spine cord. This issue is questionable to the doctors and the trier of fact. The Arbitrator was given a demonstration of the tremors at trial and was not convinced they were genuine."

The Commission amends Paragraph 3 on Page 24 to read: "The Petitioner initially went out of work for what he reported was a non-work related back issue. Once there was an MRI that objectively identified a herniated disc at C6-7, at some point thereafter, the injury appeared to be crafted to seem work-related. Petitioner's off work slips appeared to be manipulated. The second

application for adjustment of claim could be construed as an attempt to remedy deficiencies related to the original claim."

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 29 2026

/s/ *Frank J. Soto*
Frank J. Soto

O: 9/23/26
FJS/afr
046

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020794
Case Name	Vince Malson v. Komatsu
Consolidated Cases	24WC033960
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Kevin Elder
Respondent Attorney	Quinn Brennan

DATE FILED: 11/21/2025

/s/Kurt Carlson, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Vince Malson
Employee/Petitioner/ kelder@goldfineandbowles.com
v.
Komatsu
Employer/Respondent/ qbrennandefenselaw.com

Case # **22** WC **20794**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington, IL**, on **August 29, 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 21, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**68,904.16**; the average weekly wage was $**1,325.08**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**11,105.10** for TTD, $**0** for TPD, $**0** for maintenance, and $**30,841.46** for other benefits, for a total credit of $**41,946.56**.

Respondent is entitled to a credit of $**100,791.82** under Section 8(j) of the Act.

ORDER

Because the Petitioner failed to prove that he sustained an accident that "arose out of" and "in the course of" his employment, and because the Petitioner failed to prove that his current condition of ill-being is causally connected to his employment, all benefits are denied.

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

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

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

Kurt Carlson

Signature of Arbitrator

NOVEMBER 21 2025

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Vince Malson	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 22 WC 20794
	)	24 WC 33960
Komatsu	)	
	)	
Respondent.	)	

DECISION of THE ARBITRATOR

FACTS

This matter proceeded to a Section 19(b) hearing in Bloomington, IL on August 29, 2025. The issues at trial invovled accident, causal connection, medical benefits and TTD benefits.

This matter is a disputed repetitive trauma claim. The Petitioner alleges a cervical spine injury as the result of the alleged repetitive nature of his employment as a welder for the Respondent, Komatsu. He identifies two distinct manifestation dates: June 21, 2022 and January 19, 2024.

The Petitioner is presently a 49-year-old male who resides in Metamora, IL. (Test. 9). The Petitioner began working for Respondent Komatsu as a Welder in 2008. (Test. 10). The Petitioner testified that his job involves different requirements such as welding, grinding, air arcing, carrying, getting bags of flux, changing wire, and cleaning. (Test. 11). The Petiitoner works 8-hour shifts, 5 days per week with occasional overtime. (Test. 12). He stands on a concrete floor with rubber mats for the duration of his shift. (Test. 12). He testified that the job does not require much reaching, and occasional bending over. (Test. 12). He testified that he is required to lift up to 40 pounds. (Test. 12). There are occasional layoffs. (Test. 12).

The specific section in which the Petitioner welds is called the "substructure weldout." (Test. 10). The Petitioner testified that the work in this section involves the building of the substructure of a large tractor frame. (Test. 11). Within in this section, there is a specialized process called the "short rail weldout" which is 98-99% of the Petitioner's job. (Test. 13, 24). He testified that this process involves putting MIG passes into 4 seams for the root, followed by the placement of a submerged arc on top of the initial MIG placement to complete filling the remainder of the seams. (Test. 11). He testified that after the completion of this process, that the substructure goes through an ultrasound test. (Test. 17). If the structure does not pass the test, then the initial efforts at the weld need to be grinded out, and the process repeated. (Test. 17).

The Petitioner testified that in approximately 2015 or 2016, Respondent introduced a machine called the Bug-O Welder, which was brought in to make this welding process easier for its employees. (Test. 14, 94-95). The petitioner testified that from when he was hired in 2008 until the introduction of the Bug-O Welder in 2015 or 2016, that he would have to complete the submerged arc weldout by hand. (Test. 14). The Petitioner testified that at that time, the frame would sit on saw horses, leaving the frame positioned at slightly below waste level. (Test. 14). He testified and demonstrated the process where he would stand adjacent to the frame, that he would bend over at waste level with his head positioned above the weld, looking down at the weld as he would need to watch it. (Test. 15-16). The Petitioner testified that when he is performing MIG welding, that "sometimes" his chin is tucked to his chest. (Test 17).

The Petitioner testified that the Bug-O Welder in 2015 or 2016 eliminated the need for him to perform the submerged arc welding process by hand. (Test. 14). He described the Bug-O machine as a magnet on wheels that tracks down the rail bar of the short rail. (Test. 13). In his use of the Bug-O Welder machine, the Petitioner has to adjust the welder, the temperature of the welder, the voltage, the wire speed, and the control speed to make it perform the weld properly. (Test. 13). The machine itself does the welding. (Test. 13).

At trial, the Respondent presented evidence of a description of the Short Rail Weld Out process. (RX 8). The job description explains that the total time period to weld out a finished rail takes between 8 and 16 hours, depending on the specific part and model number. It identifies the shifts are 8.5 hours with a 30 minute lunch, two 15 minute breaks, 30 minutes for safety meetings, and 15 minutes for cleanup; and that it typically takes 2 shifts to complete a weld out, meaning that a singular weldout usually carries over to the next shift. (RX 8, 002). The job description includes a step-by-step description of the process testified to by the Petitioner, as well as photographs. The Petitioner testified that the job description was accurate, but that the depiction of the body positioning on page 3 during the process is inaccurate. (Test. 21-22). The Petitoner testified that when he is engaged in the act of MIG welding, that his body would be "turned towards the rail and that [he] would be leaning down" or more on top of it. (Test. 20). He also testified that with the Bug-O Welder, the machine can be positioned lower than the picture on page 4 when it reaches to lower part of the rail. (Test. 23). He testified that otherwise, the job description was "pretty accurate." (Test. 23).

Witness Shawn Trulson testified on behalf of the Respondent and the job demands. (Test. 87). Mr. Trulson has worked at Komatsu for 20 years and is the superindtendant of welding. (Test. 87). He worked on the floor welding for approixmately 13.5 years, followed by a supervisor position, and most recently, the superintendant. (Test. 88). Mr. Trulson testified that he has known the Petitioner for at least 16-17 years as they started off as union brothers on the floor. (Test. 88). In regard to the job demands, Mr. Trulson testified that 2 hours of the process was dedicated to MIG welding, while 6 hours would be dedicated to the use of the Bug-O Welding machine. (Test. 93). He testified that the Bug-O is "an advanced form of sub arc to where you don't have to hold the gun. You can change the settings, the operator is there to watch the weld tro make sure it's going in good and adjust

the head to make sure the weld wire is going in the approprate spot." (Test. 93-94). He testified that it is a less physically demanding job. (Test. 94). He testified that employees who are injured in the workplace are encouraged to notify their supervisors. (Test. 97).

From 2018 to 2022, the Petitioner missed several periods of time from work. (RX 5). In 2019, the Petitioner missed time from work from 2/15/19 to 7/1/19 (19-3/7ths weeks). In 2020, he missed time from 7/28/20 to 8/7/20, and 8/10/20 to 8/14/20 (2 weeks). He missed time from work from 10/18/20 to 3/5/21 (19-5/7ths weeks). He missed time from 4/5/21 to 4/17/21 and from 4/23/21 to 9/10/21 (23-1/7ths weeks). (RX 5).

While away from work, the Petitioner is documented to be physically active and he testified to the same. (Test. 62). He has a documented history of weightlifting, general household activities and is a motorcycle enthusiast. (RX 14, 16; Test. 60-62). On June 18, 2022, just prior to alleged first date of loss, he hosted a daylong motorcyle ride and benefit. (Test. 61-61, RX 16).

June 2022 Manifestation Date

The Petitioner testified that in June 2022, that he began experiencing "spasming, burning, tingling sesations throughout [his] neck and [his] upper trap area." (Test. 24). He testified that he "noticed down [his] right arm some more tingling, numbness into [his] fingertips." (Test. 25). He testified that there were no particular activities that brought on his symptoms. (Test. 25). He testified that "It just kind of came on one day and I tried to work through it and it was – the more I tried to just continue on with my daily life, it just kept hurting more." (Test. 25). He testified that he felt that his pain was at its worst when he was MIG welding. (Test. 26), but he to be led to this testimony by attorney on direct examination.

The Petitioner has a lons-standing history of chiropractic treatment at Kurtz Chiropractic that both predates and runs concurrent with the pending workers' compensation matter. His first documented chirorpractic treatment date was on April 20, 2017, when the Petitioner presented with a variety of pain complaints, after he woke up the day prior after DL (dead lift), yardwork, ax chopping tree, and gardening. (RX 14, 075).

The Petitoner underwent periodic chiropractic treatment at Kurtz Chiropractic from 2017 up until and after the alleged June 21, 2022 manifestation date. (RX 14). Over this period of time, the Petitioner reported having pre-exisitng issues with his cervical, thoracic and lumbar spine areas, both shoulders, his right and left elbows, his left wrist, numbness and tingling into his right hand and fingers, his right hip, and his lower rib cage area. Petitioner was documented to have been active with weightlifting and various extracurricular activities.

On June 13, 2022, the Petitioner presented to Dr. Kurtz with pain in between his shoulder blades, elbows, back and neck. Limited information is contained in this report. (RX 14, 022).

On June 18, 2022, (Saturday) the Petitioner sponsered a memorial benefit ride on behalf of his deceased daughter; activities included a daylong mortorcycle ride, silent auction and DJ. (RX #16 p.11) The ride began in Germantown Hills at 11:00 am, included three stops and ended at 5 pm back to Germantown Hills. (RX #16 p.41)

June 19, 2022 (Sunday) was Father's Day.

On June 20, 2022, the Petitioner presented to Dr. Kurtz with "considerably worse" pain. He reported pain in between his shoulder blades, as well as his shoulders and elbows. Limited information in contained in this report. (RX 14, 020).

In fact, there appears to be a significant number redacted records from Kurtz Chiropractic. Specifically, the records for June 20 refer to exam findings and postural analyisis which are are not found in the exhibit.

On June 21, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. (RX 14, 018).

On June 22, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. He reported that "he got better for awhile, but woke up with it again." (RX 14, 016).

On June 22, 2022, the Petitioner also presented to UnityPoint Clinic First Care with short term disability paperwork. (PX 6, 18). The Petitioner reported that he had back pain that started the week prior. He reported no recent injuries. The Petitioner was evaluated by Dr. Carlos Avila. (PX 6, 25). The Petitioner reported right shoulder pain and back pain in the right upper side. The Petitioner denied any specific injury or fall. The Petitioner requested paperwork to be filled for work since he had not been able to go to work due to neck and back pain. The Petitioner reported he was self-medicating by taking cyclobenzaprine (muscle relaxant) from an old back injury. Dr. Avila diagnosed the Petitioner with torticollis and prescribed the Petitioner Meloxicam for 3 days. (PX 6, 33). He wrote the Petitioner "off work" through 6/27/22. (RX 1).

The medical definition of torticollis, also known as wry neck, is characterized by an abnormal, asymmetrical position of the head and neck, typically involving a tilt to one side with rotation toward the opposite side, often due to spasm or contraction of the neck muscles. It can be congenital (present at birth) or acquired later in life. Cleveland Clinic, Torticollis (Wryneck): Symptoms, Causes & Treatment (Feb. 28, 2022), https//my.clevelandclinic.org/health/diseases/22430-torticollis

The Unity Point records show that the cyclobenzaprine was prescribed by Dr. Carlos Avila (petitioner's primary care physician) from an older prescription, but those records are also not in evidence. (PX 6 p.24)

On June 22, 2022, the Petitioner also completed an Application for Sick Leave from

work. (RX 1). The Petitioner testified that he completed this report himself because this was his handwriting. (Test. 64). The report reflects the last date on which he worked was 6/6/22! When asked for the reason for sick leave, the Petitioner reported "Back issues." When asked how the injury occurred, the Petitioner reported "not sure." When asked if the injury was work related, the Petitioner reported "no." When asked his physician's last name and address, the Petitioner reported "Carlos" at 2535 E. Washington St. in East Peoria, which Petitioner confirmed through testimony was Unity Point Healthcare. (RX 1, Test. 64).

On June 23, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. (RX 14, 014).

On June 27, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. He also reported numbess in his right thumb and index finger. (RX 14, 012).

On June 28, 2022, the Petitioner returned to Dr. Carlos Avila at UnityPoint Clinic First Care requesting that his disability paperwork be extended. (PX 6, 10). He had been seen the previous week for torticollis and was prescribed anti-inflammatories and muscle relaxants. Petitioner reported feeling better, but not completely recovered. Dr. Avila noted that when he last examined the Petitioner, he told the Petitioner that if he was not fully recovered by his follow up, that he would prescribe physical therapy. (PX 6, 10). The Petitioner reported that he was seeing a chiropractor and that he did not want physical therapy. (PX 6, 10). Dr. Avila documented that he was not able to perform a physical examination of the Petitioner because the Petitioner "got upset because disability extension paperwork won't be filled at least he sees physical therapy for treatment and evaluation." (PX 6, 13). Dr. Avila documented that the Petitioner planned to take the disability paperwork to be completed by his chiropractor. No additional instructions or recommendations were offered at this visit. (PX 6).

On June 28, 2022, the Petitioner later presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was "a little better" on this date. (RX 14, 010). The Petitioner testified that "part of" the reason that he went to Dr. Kurtz on this date was to obtain work restrictions because Dr. Avila would not give them to him. (Test. 68).

On June 28, 2022, the Petitioner later submitted an Application for Extension of Disability Benefits from work. (RX 2). This report was completed by his chiropractor, Dr. Kurtz. Dr. Kurtz reported that she began treating the Petitioner on 6/20/22. She projected the dates of his disability to ranged from 6/21/22 through 7/4/22. Her diagnosis of the Petitioner was pain in the thoracic spine, pain in the shoulder, and pain in the elbow. Dr. Kurtz noted that "[petitioner] is steadily improving and should reach MMI on or about 7/4/22." (RX 2).

On June 29, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was "feeling pretty good" the day prior,

but that he woke up on this morning and his "shoulder down to the elbow were brutally painful." His neck, upper back, and mid-back were adjusted. (RX 14, 008).

On June 30, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was feeling better, but that it was still an issue for him. (RX 14, 006).

On July 5, 2022, the petitioner presented to Dr. O'Leary at Midwest Orthopedic Center for an unscheduled, walk-in examination. (PX 3; Test. 69; PX 1, 6-7). Dr. O'Leary is a board-certified spine surgeon. On the Intake Form dated 7/6/22, the Petitioner reported that he was referred by Dr. Kouri. He reported that the reason for this visit was "tingle in right arm." He reported that his pain location was his "right arm." (PX 3, 106). He reported that the pain was worse with "any activity." The report specifically asked if the Petitioner planned to file a lawsuit or a workers' compensation claim, and the Petitioner reported that he did not. (PX 3, 106). Dr. O'Leary documented that the Petitioner was a right-handed welder, and that he started having numbness and tingling in his right shoulder and spasms, and that he felt like "everything is on fire." (PX 3, 102). Dr. O'Leary noted that the Petitioner had undergone chiropractic treatment with limited relief. Dr. O'Leary diagnosed the Petitioner with cervical disk displacement and cervical radiculopathy, with the condition worsening. He recommended an MRI of the cervical spine. He recommended a Medrol Dosepak, tramadol and gabapentin. Dr. O'Leary took the Petitioner off work. (PX 3, 102).

On July 5, 2022, the Petitioner submitted a second Application for Extension of Disability Benefits. (RX 3). This report was completed by Dr. Patrick O'Leary on this date. Dr. O'Leary reported that he diagnosed the Petitioner with cervical disc displacement and muscle weakness. He represented that he had prescribed the Petitioner medication and prescribed a cervical spine MRI. He continued the Petitioner off work until after the MRI, or 9/5/22. (RX 3).

On July 18, 2022, the Petitioner underwent an MRI of his cervical spine. (PX 3, 96-97). The MRI was interpreted to reveal: 1) right-sided C6-C7 disc herniation impinging on the right hemicord and the right C7 nerve root; 2) central C4-C5 disc herniation indenting the anterior thecal sac; 3) cervical spondylosis with no other sides of cervical disc herniation or cervical spinal stenosis or cervical cord compression; and 4) moderate right C5-C6 foraminal stenosis. (PX 3, 96-97).

On July 21, 2022, Dr. O'Leary recommended a right sided C7-T1 epidural steroid injection. (PX 3, 95).

On July 25, 2022, The Petitioner reported that he was interested in trying a steroid injection with Dr. Bell. (PX 3, 94).

On August 2, 2022, the Petitioner presented to Dr. Robbye Bell for the recommended injection. (PX 3, 83-92). On the handwritten intake form, the Petitioner reported a 1.5-month history of right-sided neck pain. (PX 3, 87). The Petitioner reported

that this did not come following a particular injury, specifically stating that this was not a work-related injury. He reported that his pain came on suddenly. (PX 3, 87). He reported that he experienced shooting and spastic pain, and that he experienced numbness and tingling down into his right upper extremity. A right paramedian C7-T1 interlaminar epidural steroid injection was administered at this visit. (PX 3, 87).

On September 2, 2022, the Petitioner presented to Dr. Bell for a second epidural steroid injection. (PX 3, 80-82). The Petitioner reported that the last injection provided some noticeable pain relief, but the same pain had returned. He complained of neck pain that radiated down his right arm. He reported weakness and numbness in the right arm. He reported that "his right arm strength is definitely limiting what he can do." A right paramedian C7-T1 interlaminar epidural steroid injection was administered at this visit. (PX 3, 80-82).

On September 10, 2022, the Petitioner got married. (Test. 54, RX 16). He testified that the wedding had been planned for over 2.5 years since he was initially engaged. (Test. 55). He testified that he and his wife honeymooned in Jamaica, and that he sustained no new accidents over this time period. (Test. 56).

On September 26, 2022, Dr. O'Leary completed an updated work status report for the Petitioner. (PX 3, 77). No physical examination was conducted on this date. The work status report states that the Petitioner should remain "off work" from 9/5/22 until his next appointment on 10/27/22. (PX 3, 77).

On September 27, 2022, the Petitioner submitted a third Application for Extension of Disability Benefits. (RX 4). Dr. O'Leary took Petitioner off work thorugh 10/28/22. (RX 4).

On September 29, 2022, the Petitioner presented to Dr. Bell for follow-up. (PX 3, 78-79). He underwent a second injection 4 weeks earlier. He reported that his spastic radicular pain had improved. He reported right-sided neck pain that caused him headaches. He reported noticeable weakness in the right shoulder and right upper extremity. He reported weakness in his right pectoral muscle. He stated that he could not perform a push-up during his work outs. He was unable to reach across his chest or behind his back with his right arm. Dr. Bell referred the Petitioner back to Dr. O'Leary for medical treatment. (PX 3, 79).

On October 11, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He told Dr. Kurtz that he had a herniated disc in his neck at C6-C7. He reported pain in his "back and neck." The Petitioner reported having two steroid injections, to which he reported that he was allergic to. (RX 14, 002).

On October 22, 2022, Dr. O'Leary authored his first of two narrative reports (see below).

On October 27, 2022, the Petitioner returned to Dr. O'Leary for an in-person examination. (PX 3, 74-75). The Petitioner reported that he was doing better, but that he

still had some symptoms. Dr. O'Leary documented that the Petitioner ran a welding machine at work, and that his "neck flexed all night long." The Petitioner reported that he did not feel that he could perform that work, and that he preferred to go back to light duty. (PX 3, 74). Dr. O'Leary felt that the Petitioner would benefit with physical therapy, so a course of PT was prescribed. Dr. O'Leary offered the Petitioner light duty work restrictions of no lifting over 5 pounds, no lifting overhead, no welding, and no cervical flexion. (PX 3, 76).

On November 2, 2022, the Petitioner called Dr. O'Leary's office requesting that his physical therapy be prescribed at Athletico in East Peoria. (PX 3, 73).

On November 8, 2022, the Petitioner presented for his initial PT consultation at Athletico. (PX 4, 39-51). On the handwritten intake form, the Petitioner reported that he was present for a neck injury. He reported that this was not a workers' compensation injury. He reported that he was a "welder" and that his attorney was Kevin Elder. He reported that his symptoms began on 6/20/22. (PX 4, 50). The Petitioner reported that "He woke up really sore on Father's Day" (6/20/22). (PX 4, 44-45).

The Arbitrator takes judicial notice that Father's Day in America is always the third Sunday in June. Therefore, Father's Day in 2022 was on the 19th, not the 20th as stated in the records and it bears repeating that the motorcycle fundraiser ride was on the 18th.

In any event, back at Athletico, the plan forward was to undergo PT 3 times weekly for 6 weeks. (PX 4, 44-47).

On November 28 and 29, 2022, the Petitioner called Dr. O'Leary's office seeking updated short term disability paperwork, as "they gave him until the beginning of October." He reported having talked to his physical therapist about getting an appointment moved up. An appointment was scheduled for 12/6/22. (PX 3, 70-72).

On December 6, 2022, the petitioner presented to Dr. O'Leary who recommended disc replacement surgery because the Petitioner already had spondylosis at C5-6 and C4-5 which could require treatment in the future, and that a disc replacement surgery made the likelihood for future treatment less likely. Dr. O'Leary also suggested that the Petitioner could require treatment of the right shoulder with a specialist. (PX 3, 68). The Petitioner would remain on the same light duty work restrictions until the 1/27/23 surgery date, at which time he would be "off work."

On December 8, 2022, there was telephonic communication between the Petitioner and Dr. O'Leary's office regarding the surgery date. Dr. O'Leary's office wished to move back surgery to 1/30/23. The Petitioner wished to move up surgery to 1/23/23. Surgery was rescheduled for January 23, 2023. PX 3, 65-66).

On December 12, 2022, the Petitioner was discharged from PT at Athletico after undergoing a total of 7 sessions. (PX 4, 36-37). The Petitioner reported that he missed PT because of the flu, and also because his lower back went out. The Petitioner reported

that he saw his doctor on 12/6/22, and "they only want him to work on his shoulder, because he is going to have surgery on his neck." Petitioner reported that he would not be able to attend any more sessions of PT until after his neck surgery because his mother and wife had medical issues and he had planned to take care of them. (PX 4, 36).

On December 14, 2022, the Petitioner called Dr. O'Leary's office regarding his disability paperwork. (PX 3, 63).

On January 23, 2023, the Petitioner underwent surgical anterior cervical disk arthroplasty at C6-7 with Dr. O'Leary. (PX 3, 7-9).

On February 21, 2023, the Petitioner presented to Dr. O'Leary for a 4-week follow up following surgery. Petitioner reported that his pain symptoms were "essentially gone." He reported that his right arm symptoms and mobility had improved, and that his neck symptoms were gone. He reported swallowing discomfort. He was not taking pain medications at this time. Petitioner was instructed to remain within his restrictions, and to avoid getting the incision site wet. He was instructed to follow up in 6 weeks. He was continued off work. (PX 3, 45-47).

On March 13, 2023, the Petitioner initiated a course of physical therapy at Athletico. (PX 4, 19-23). On the handwritten intake form, the Petitioner reported that this was a workers' compensation injury. (PX 4, 25). He reported that his onset of symptoms was 6/20/22. He reported that he was a welder, and that his attorney was Kevin Elder. (PX 4, 25). The Petitioner's pain levels were 0 out of 10. (PX 4, 19). The Petitioner's greatest complaints were right upper extremity weakness, chest, and upper back weakness.

On March 2, 2023, Dr. O'Leary authored his second of two narrative reports (see below).

On April 4, 2023, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 42-43). The Petitioner reported a resolution of his pain following surgery, but he had frustration with the loss of function in his chest wall and right triceps. He reported that he could not turn his head fully to the right. He reported that he had a labor-intensive job with a 40-pound lifting requirement. He reported "that he can barely do any kind of activity without ongoing physical therapy concerned about his strength loss and others." Dr. O'Leary told the Petitioner that he could "continue to do physical therapy." Dr. O'Leary explained to the Petitioner that his recovery could take several months. Dr. O'Leary told the Petitioner that his condition may never be normal, and that he did not anticipate the injury being lifestyle changing. He told the Petitioner to contact him "when he feels like he is ready to go back to work." The Petitioner "had a number of questions today about whether going back to welding might also contribute to the same kind of condition happening again." Dr. O'Leary advised that he had "no way to predict that nor would [he] necessarily restrict the [Petitioner] much longer with a healed disc replacement at this juncture." Dr. O'Leary instructed the Petitioner to follow up in 2 months with flexion-extension views of the cervical spine. (PX 3, 42-43).

On May 5, 2023, the Petitioner presented to IWIRC for a fitness for duty evaluation following at C6-C7 disc replacement surgery. (RX 12). The report reflects that Dr. O'Leary had released the Petitioner to full duty work on 5/1/25, and that Respondent had requested the fitness for duty evaluation. The Petitioner reported that he felt ready to go back to work. After a physical evaluation where the Petitioner demonstrated no limitations, he was cleared to return to full duty work on this day. (RX 12).

The Petitoner testified that he did not recall going back to work in May 2023. He testified that he had spoken to his wife about it, and that he went back to work "to reset [his] medical pay so [he] could still continue getting paid while [he] was recovering from surgery." (Test. 32). The Petitioner testified that he "believed" that he asked Dr. O'Leary to lift his restrictions at or around May 2023 but did not remember. (Test. 72). He testified that he asked Dr. O'Leary to do this because he wanted to have his benefits reinstated. (Test. 72). He testified that "you get a certain amount of time to get your 80 percent. If you go back for a certain amount of time, you can reinstate and go back out on the same problem and reinstate your 80 percent benefits." (Test. 73). Petitioner believed he saw Dr. O'Leary in person but acknowledged that this also could have been done by telephone. (Test. 72). Petitioner acknowledged that Dr. O'Leary would be willing to adjust work restrictions without a physical examination (Test. 72). He testified that whenever he would call into Dr. O'Leary's office, he always talked to an assistant. (Test. 72).

On May 16, 2023, an incident report was prepared at Komatsu. (RX 13). The incident report documented that the Petitioner presented to Medical on 5/16/23 with complaints of right arm fatigue which is causing tremors. The Petitioner related that his right arm had weakness, muscle atrophy, and the tremors are "new onset" after he had neck surgery in January. The tremors were documented to be "somewhat positional" as the pronated position caused increased tremor-like movement. The Petitioner reported that he had just finished welding which caused great fatigue and he felt unable to continue welding. He reported similar symptoms after his shift on the previous date which resolved within a couple of hours with rest. The nurse and supervisor instructed the Petitioner to contact his physician and to report the plan. (RX 13).

On May 18, 2023, Dr. O'Leary completed an updated work status report for the Petitioner. (PX 3, 41). No physical examinations were conducted on this date. The work status report states that the Petitioner can return to work with no use of a grinder, and no consistent lifting over 40 pounds with the right arm. The report states that no return appointment was needed. (PX 3, 41).

On June 12, 2023, the Petitioner presented for a Section 12 independent medical examination with Dr. Daniel Troy (see below).

On July 25, 2023, Dr. Troy authored an addendum IME report (see below).

On July 27, 2023, an updated PT note from Athletico indicates the Petitioner had attended 31 sessions of physical therapy, while cancelling 4 appointments. (PX 4, 16-

18). None of the PT records were submitted into evidence. The Petitioner had reported that "he had a pre-trial this week, and they are waiting on job description from IME doctor." The Petitioner reported that "once it is amended and correct, he should be returning to work with restrictions." Petitioner reported that his right upper extremity was slowly getting stronger and that he still had difficulty reaching behind his back. (PX 4, 16).

The Petitioner returned to full duty work for Respondent on August 11, 2023. (Test. 34). He testified that he went back to work in his normal capacity. (Test. 34). He testified that he did not remember if he saw Dr. O'Leary in person or consulted by telephone before returning to full duty work. (Test. 75). He testified that he told Dr. O'Leary that he needed to go back to work. (Test. 75).

On August 24, 2023, the Petitioner presented to Dr. O'Leary for an in-person consultation. (PX 3, 39-40). Dr. O'Leary noted that the Petitioner was back to work and working normally. Petitioner was no longer engaged in formal physical therapy and was doing home exercises. The Petitioner reported that his right arm felt weak. He reported that he did not get on his Harley motorcycle or ride it because he was concerned that if the bike were to spill or otherwise, that he would not have the arm strength to handle it. The Petitioner wondered if it was something that he aggravated, or if it was coming back. Dr. O'Leary told the Petitioner that "these things take a year to a year and a half to completely recover." Dr. O'Leary ordered an EMG/NCV of the right upper extremity to "check the status of the nerve" as well as determine if there was anything else to be detected. Dr. O'Leary opined that the Petitioner could continue working in a full duty capacity. (PX 3, 39-40).

On September 13, 2023, the Petitioner underwent an EMG/NCV with Dr. Craig Carmichael at Therapeutic Spine & Pain Center. The study revealed a "severe right C6 and C7 radiculopathy." There were still sparse fibrillation potentials in the triceps and pronater teres. The findings were hopeful for continued Wallterian regeneration and substantially more improvement particularly in the triceps and pronator teres over the next 6 to 9 months. (PX 3, 37-38).

On January 4, 2024, the Petitioner presented to Dr. O'Leary for an in-person examination. (PX 3, 34-35). The Petitioner was approximately 1 year removed from surgery. The Petitioner reported symptoms which were like those that he reported when he first presented for medical treatment the previous year. He reported he felt the same as he did prior to his surgery. The Petitioner reported that his right arm was shaking all the time. Dr. O'Leary reviewed the EMG/NCV from 9/13/23 and noted a right upper extremity radiculopathy evidenced by C7 on EMG. Dr. O'Leary also noted that the EMG suggested evidence of ongoing recovery at this time. Dr. O'Leary represented that he was "not exactly sure what is going on." He recommended an updated MRI of the cervical spine with metal suppression so that he could visualize the C6-7 and C5-6 levels. Dr. O'Leary recommended the MRI so he could better inform the Petitioner on potential symptom drivers. The Petitioner was told that he could continue to work in a full duty capacity. (PX 3, 34-35).

January 19, 2024 Manifestation Date

The Petitoner testified that when he went back to work in August 2023, that the alleged tremors in his right arm got worse. (Test. 40). He testified that it made it difficult for him to work. (Test. 40).

The Petitioner testified that on January 19, 2024, that he had to MIG weld a 980 rail which takes longer. (Test. 40). He testified that he told his supervisor Eunice that he was in a lot of pain. (Test. 41). He testified that he got an ice pack and sat down for the rest of his shift because he had already achieved his production and his area was set up for the next shift. (Test. 41). He testified that no accident reports were completed at that time. (Test. 41, 77).

On January 20, 2024, the Petitioner presented to the emergency room at Carle Health Methodist. (RX 15). He presented with cramping in his right arm. (RX 15, 040). He reported that "he had surgery in his neck and knows that he has nerve damage on the right side secondary to chronic neck issues." He reported that he had increased pain and that he had an MRI scheduled for his neck in 4 days to assess for cervical disc bulges. He reported that he worked as a welder, and that he had an increase in the amount of work recently. He was concerned that he pushed himself too hard. At approximately 3:00 a.m. on this date, he woke up with severe pain and cramping. He reported that his shoulder, biceps, forearm, and upper chest seemed to all tense at once causing extreme pain. He was unable to straighten his arm on his own. He reported that if he and his wife forcibly straighten his arm, that it seemed to make his muscles relax. He reported that this was happening every 20 seconds or so. He was unsure if trying to use the arm brings the spasm and that he had tried to do his best to avoid using the arm since the symptoms began. He reported that during the cramping his fingertips will have a tingling sensation. He denied any actual pain or spasm in the neck. He reported that at its worst, the pain would radiate into his back and towards his shoulder blade. He denied any new actual injury or trauma. The Petitioner was given Decadron to help with nerve pain and he was encouraged to keep his appointment for the MRI and to contact his spinal surgeon the first thing on Monday morning. (RX 15, 044).

On January 22, 2024, the Petitioner submitted an Application for Sick Leave. (RX 6). When asked for the reason for the sick leave application, the Petitioner reported "neck." When asked how the injury occurred, the Petitioner reported "MIG welding a rail." The Petitioner reported that on 1/19/23, that he had "pain from neck down my back." When asked if the injury was work related, the Petitioner reported "yes."

On January 22, 2024, an incident report was prepared at Komatsu. (RX 7). The incident report documented that the Petitioner presented to Medical on 1/22/24 with paperwork from an ER visit on 1/20/24. Petitioner reported that he worked a full shift on Friday (1/19/24) and was performing MIG on a large part. He reported that he went home, iced his neck, and went to bed. He reported that during the night, he had his wife take him to the ER, and that the ER wrote him "off work" until 1/27/24. The report noted that the

Petitioner was scheduled to undergo an MRI on 1/30/24. The report noted that his doctor would not write him an off work note until he was seen on 1/30/24. The Petitioner wished to stay off work until he knew what the MRI showed. The RN taking the report advised the Petitioner to be seen at a walk-in clinic for note to continue absence. (RX 7).

On January 23, 2024, the Petitioner underwent an updated MRI of his cervical spine without contrast. (PX 3, 31-32). The MRI was interpreted to reveal: 1) status post C6-7 disc arthroplasty which appeared solid with no extrinsic compression of thecal sac, 2) right paracentral C5-6 disc herniation indenting the anterior thecal sac, 3) central C4-5 disc herniation indenting the anterior thecal sac, and 4) moderate right mild left C5-6 foraminal stenosis. (PX 3, 31).

On January 30, 2024, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 28-29). The Petitioner reported that on 1/19/24, while he was at work the pain was so bad he had to leave work and go to the emergency department at Methodist and they gave him a muscle relaxer. He reported symptoms of pain in the neck into the shoulder blades occasionally down the spine mostly into his right upper extremity, numbness and tingling. Dr. O'Leary reviewed the updated MRI films, noting that the disc prosthesis at C6-7 was stable. He noted that there was "more evidence of herniated disc he does have findings on the right side at C5-6 consistent with foraminal stenosis disc osteophyte complex MRI confirms also has what appears to be substantial disc centrally at C4-5 which may be slightly progressed from preoperative imaging." Dr. O'Leary diagnosed the Petitioner with "symptomatic spondylosis and stenosis at C5-6 and a central disc osteophyte at C4-5." Dr. O'Leary opined that "this is really no longer amenable to ongoing nonoperative management he has significant symptoms which started really back in November but got really bad January 19 he is not a candidate for injections." Dr. O'Leary recommended a vocal cord analysis and a C4-C6 anterior cervical discectomy and fusion. Dr. O'Leary took the Petitioner "off work." (PX 3, 28-29).

On March 11, 2024, the Petitioner underwent an updated Section 12 examination with Dr. Daniel Troy (see below).

On September 19, 2024, the Petitioner underwent a Section 12 independent medical examination with Dr. Avi Bernstein by agreement of the parties (see below).

On November 27, 2024, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 25-26). Surgery in the form of C4-5 and C5-6 ACDF was scheduled for 12/2/24. Dr. O'Leary planned for the Petitioner to be off work for 8 to 12 weeks following surgery. Dr. O'Leary hoped that the Petitioner's pain would be improved and he would be ready to return to functional employment of some sort after completion of successful surgery. (PX 3 25-26).

On December 2, 2024, the Petitioner underwent C4-C6 ACDF surgery with Dr. O'Leary. (PX 3, 3-5). No complications were noted. The Petitioner's post-operative diagnosis was: 1) cervical spondylosis with radiculopathy, 2) cervical foraminal stenosis, and 3) status post cervical disc displacement C6-C7. (PX 3, 3-5).

On December 26, 2024, the Petitioner presented to Dr. Cicarrelli PA for surgery follow up. (PX 3, 22-24). He reported that his preoperative neck pain symptoms had begun to improve, although his recovery was slower than the first surgery. He reported more swallowing discomfort and voice raspiness. He reported mild posterior paraspinal cervical pain but he did not require the use of pain medication. Dr. Cicarrelli told the Petitioner that his symptoms were consistent with routine postoperative recovery. The Petitioner was placed on work restrictions of no excessive overhead activity, no excessive cervical range of motion, no ambulating on unsteady/uneven surfaces, and no soaking/submerging the incision. He was prescribed a Medrol Dosepak. He was instructed to follow up in 6 weeks. (PX 3, 22-24).

On February 6, 2025, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 20-21). The Petitioner reported being "sore." He reported that turning his neck and lateral bending was limited. Dr. O'Leary recommended a course of physical therapy. He kept the Petitioner "off work." He instructed the Petitioner to follow up in 2 months. (PX 3, 20-21).

On April 24, 2025, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 16-17). The Petitioner did not undergo any physical therapy. The Petitioner reported that his neck pain was slightly better but that he still had shaking in his right arm when he pronated his right forearm. Dr. O'Leary noted that they "talked a little bit about his job today and about different types of activities he does with his job and it does appear that he has a significant component of neck flexion specifically holding his right arm abducted with neck flexed when he is MIG welding and then also just looking down or neck flexed position repetitively while running the Bungo welder." Dr. O'Leary recommended that the Petitioner undergo a functional capacity examination. He noted that "ultimately my sense is that he probably should not return to the welding job he had." Dr. O'Leary also recommended a repeat right upper extremity EMG. He opined that "I still really do not understand the spontaneous tremors but to see if there has been any nerve root recovery since the original injury which was a C6-7 disc herniation." Dr. O'Leary recommended work restrictions of no overhead work, no lifting more than 15 pounds, and no repetitive neck flexed positions." (PX 3, 16-17).

On May 15, 2022, the Petitioner presented to Athletico at the Peoria Heights location for a functional capacity examination. (PX 4, 1-14). The report states that the Petitioner provided a "valid representation of [his] functional abilities based on [petitioner] demonstrating consistent effort." No objective validity testing was included in the FCE report. The Petitioner demonstrated the ability to perform in the "medium" physical demand level, evidenced by his ability to lift to 50 pounds. The Petitioner was also documented to be able to lift 65 pounds from 12 inches to waist level which is considered the "heavy" demand level. (PX 4, 1-14).

On May 22, 2025, the Petitioner underwent a repeat EMG/NCV with Dr. Carmichael. (PX 3, 14-15). The study was interpreted to reveal severe right C6 and C7 radiculopathy that appeared "old," without any evidence of active denervation. The

findings were described as "very similar" to the EMG from 9/13/23. There was no evidence of other right upper extremity neuropathy, plexopathy, or radiculopathy on this study. (PX 3, 14-15).

On June 10, 2025, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 11-12). He underwent the EMG and the FCE. The Petitioner reported that after the FCE, he had a headache for a "couple of days" because the FCE was "very rigorous." He reported that he felt "mainly limited in his ability to turn his neck side-to-side" and "after use of his right arm for extended period of time it starts to shake." Dr. O'Leary felt that the Petitioner was "at a healing plateau" and that the Petitioner had reached maximum medical improvement. Dr. O'Leary noted that the FCE was "valid" and showed that the Petitioner could occasionally lift to 50 pounds well within the medium category of work. Dr. O'Leary gave the Petitioner permanent work restrictions of no lifting over 50 pounds, lifting of 50 pounds on an occasional basis only, and to avoid prolonged neck flexion. (PX 3, 13). The Petitioner was released from medical care. (PX 3).

Testimony of Dr. Patrick O'Leary

On October 22, 2022, Dr. O'Leary authored a narrative report at the request of Petitioner's counsel. (PX 1, Dep. Ex. 3). Dr. O'Leary acknowledged that he began treating the Petitioner on 7/5/22 and it was his understanding that the Petitioner was a welder, and that the Petitioner operated a Bogo welder at work. He opined that the Petitioner had a large right C6-7 foraminal disk protrusion. He was "unable to opine whether there was a causal relationship between his work with Komatsu and the condition for which [he was] treating." He explained that the medical records did not suggest a specific accident date, and that the Petitioner had "a specific onset of symptoms in June 2022." He also noted that Dr. Bells' records "also do not suggest a specific incident." Dr. O'Leary was "unable to reasonably state that there is a causal relationship between his cervical disk herniation and his work conditions." Dr. O'Leary also noted that at the time of this report, that there were no plans for surgery. He noted that if the Petitioner continued with persistent symptoms despite conservative care, they would consider surgical intervention. He explained that at the time of this narrative report, he had only examined the Petitioner once. Dr. O'Leary testified that at the time of his first report, his limited understanding of the Petitioner's job was that he was a welder, and that based on this knowledge alone he was unable to draw a causal connection between the Petitioner's neck condition and his employment. (PX 1, 44).

On March 2, 2023, Dr. O'Leary authored a second narrative report at the request of Petitioner's counsel. (PX 1, Dep. Ex. 3). Dr. O'Leary reported that he was now aware of Petitioner's job, **"**specifically via job description." Dr. O'Leary noted that the Petitioner operates a Bug-O robotic welding machine at work. He explained that it was his understanding that the Petitioner "essentially has to tuck his chin to his chest while operating this machine for several minutes at a time." Dr. O'Leary opined that the Petitioner would not get carpal or cubital tunnel syndrome "from something like this, but he could indeed aggravate or cause a cervical problem with this type of mechanism done

repeatedly." He concluded that he believed "some of the job activities of his job played a role in the development of his C6-7 disk herniation and his neck and right upper extremity symptoms, which have culminated in cervical disk replacement performed by [Dr. O'Leary] on January 23, 2023." (PX 1, Dep. Ex. 3).

The parties took with the evidence deposition of Dr. O'Leary on April 10, 2025. (PX 1). Dr. O'Leary testified that he was a board-certified spine surgeon who performs 300-350 spine surgeries each year. (PX 1, 4). He testified that he saw the Petitioner as a walk-in patient on July 5, 2022. (PX 1, 6-7).

Regarding the initial full duty release from May 2023, Dr. O'Leary testified that he did not have the note somehow. (PX 1, 11). He testified that he had a note from May 18, 2022, when the Petitioner had called the nurse asking for restrictions. (PX 1, 11-12). Dr. O'Leary could not explain why he initially released the Petitioner to return to full duty work in May 2023. (PX 1, 39).

Regarding the Petitioner's job, Dr. O'Leary testified that "I had known previously like he had, what he had done. I think you're talking about the Bug-O, the welder. Like he just had to operate this machine and he said he would have to hold his neck kind of flexed like this, like his chin on his chest for, you know, repetitively throughout the day; that's when he operated that." (PX, 15). He testified that "beyond being a welder he has to operate this welding machine, which I have only had described to me, but basically it causes him to have to hold his neck as I'm describing to you but with, in a flexed position, and he has to do that several times a day." (PX 1, 33). He opined that it was his understanding that the Petitioner's "chin would have been on his chest." (PX 1, 35).

Dr. O'Leary testified that "those types of work activities could cause a herniated disc at C6-7." (PX 1, 27). He testified that "regular flexion and hyperflexion of the neck … could develop a herniated disc." (PX 1, 27). He opined that the condition necessitated the surgeries that he performed on Petitioner.

Dr. O'Leary testified "the problems that he complained to me when he came and saw me in January of 2024 were somewhat different from his original presentation to me, but similar in the sense that it clearly I felt came from his neck and that he reported to me that it was, as it relates going back to work working and job duties that were causing that, so I believe it's related to his work, yes." (PX1, 28-29).

Regarding the right arm, Dr. O'Leary testified that "he has the arm shaking and some of that stuff is a little bit of an unusual symptom that's not very common in the sense that it's, I see people with tremors and things like that who have cervical radiculopathy. They are a smaller subset of patients. I don't think, though, that's an unusual manifestation or he's somehow like, you know, I wouldn't say – Wadell's just means inorganic pain behaviors. I mean, he's got some unusual symptoms, but not, nothing where I thought he was exaggerating or anything like that." (PX 1, 31).

Regarding work restrictions, Dr. O'Leary testified that "The interactions that occurred between me and petitioner that are documented visits where he came to the office. If I said call me when you're ready to go back, my nurse will release you, that's what happened. I don't interact in that." (PX 1, 40). He testified that "I leave it up to the patient; If he wants to work, I let him work." (PX 1, 41). He testified "I have no knowledge of whether he worked or not or didn't, and if he was gaming my office by calling in and saying I want to go back and then I want to go back to work restricted I have no way to tell you that…". (PX 1, 42).

Testimony of Dr. Daniel Troy

On June 12, 2023, Dr. Troy conducted a Section 12 examination at the Request of the Respondent. (PX 2). The Petitioner referenced an accident date of June 21, 2022, where his symptoms increased in severity that he was unable to return to work thereafter. He reported pain due to repetitive movement due to his job requiring him to be looking downwards with his chin tucked to his chest as he operates a Bug-O robotic welder. Dr. Troy documented that the Petitioner underwent cervical disc replacement at C6-7 with Dr. O'Leary on 1/23/23. The Petitioner reported that he returned to full duty work on 5/8/23. He reported that the first 3 days consisted of safety training. The following 2 days consisted of refresher training. The Petitioner reported that he went back to work after the weekend of 5/15/23 and he had to do a significant amount of grinding on that day using a 7-inch grinder. The Petitioner reported that he started developing trembling in his right upper extremity and was unable to return to full duty work thereafter. Dr. Troy included a chronology of the records he reviewed in conjunction with the IME, which did not include a job description. Dr. Troy opined that notwithstanding any type of outside injuries, that the Petitioner's MIG welding requirements and his use of a Bug-O welder that the Petitioner reported weighed between 25 and 30 pounds on a repetitive basis "lead to the herniation that he underwent surgical treatment for. Dr. Troy opined that the Petitioner could return to full duty work at that time. Dr. Troy also documented that the Petitioner fully admitted that he had a successful resolution of his right upper extremity radicular symptomatology. He opined that "I do not know of any scientific reasons to explain why [Petitioner] would be having tremoring to his right upper extremity." He opined that the Petitioner had reached maximum medical improvement. (PX 2).

On July 25, 2023, Dr. Troy authored an addendum report. (PX 2). Dr. Troy reported that he reviewed the job description short rail weld out and it was approximately 4 pages in length, along with a few pages of pictures showing claimant's job duties." Dr. Troy opined that he reviewed the Petitioner's "job description with pictures and yes, it is causally related to the industrial accident." (PX 2).

On March 11, 2024, Dr. Troy conducted a repeat Section 12 of the Petitioner following the updated surgery recommendations of Dr. O'Leary. Dr. O'Leary never drafted an IME report. (PX 2).

The parties took the evidence deposition of Dr. Troy on November 27, 2024. Dr. Troy testified that he did not know who scheduled the IME. (PX 2, 7). Dr. Troy testified that at the time he authored his first IME report, he offered a causal connection opinion based on what the Petitioner had described to him and not the written job description. (PX 2, 40). He testified that this opinion was based solely on the Petitioner's representation regarding hyperflexion of his cervical spine when engaged in certain work activities and the alleged repetitive movement of the Bug-O welder weighing between 25 and 30 pounds. (PX 2, 41). Dr. Troy had no recollection of the job outside of this. (PX 2, 42). He testified if that was not accurate, that his opinions would be different. (PX 2, 42).

Dr. Troy testified that he has a rule that if he does not generate an IME report on the date of its occurrence, then he cannot complete a report. (PX 2, 23). Regarding the March 11, 2024, IME, he testified that "we had two personal deaths that occurred on the same date, and by the time it was brought back to my attention, it was too late for me to perform because that's my rule." (PX 2, 23). In his notes from the IME, he documented that the Petitioner "was mainly complaining of left upper extremity pain. He did complain of posterior cervical neck pain. He denied pain to his mid or low back." (PX 2, 25). He testified that he did not formulate any opinions on this date." (PX 2, 25). He testified that his failure to author a report was personal in nature. (PX 2, 27).

Dr. Troy testified that "The original causality was based on the size of the herniation on the MRI. It appeared to be above and beyond the natural progression of degeneration that we are all going to get. (PX 2, 31).

In regard to the right arm, Dr. Troy testified "…I cannot fully explain or correlate why he would be having tremoring from a herniated disc or a nerve root irritation in the neck. That does not make a lot of sense to me. Maybe that's the way he expresses his pain, when he has pain, he tremors, but that would be atypical." (PX 2, 32).

Testimony of Dr. Avi Bernstein

On September 19, 2024, the Petitioner underwent a Section 12 examination with Dr. Avi Bernstein by agreement of the parties, after Dr. Troy failed to author an IME report. (RX 11). The petitioner reported that he had neck pain that radiated into the trapezial muscles bilaterally. Dr. Bernstein noted that the petitioner was a "healthy, fit-appearing man" in no acute distress. He had "excellent" strength in the upper extremities. There was some atrophy noted in the right upper extremity. He had a negative Hoffman sign and a negative Spurling's maneuver. Dr. Bernstein reviewed the MRI films from 1/23/2024. He noted signal abnormality at the C6-7 level consistent with a total disc arthroplasty. He opined that Petitioner had degenerative disc changes at C4-5 and C5-6 with greater disk space collapse at C5-6. Petitioner had disc bulging due to these degenerative changes resulting in some spinal stenosis. Dr. Bernstein noted no evidence of disc herniation or nerve root compression. (RX 9).

Dr. Berstein's report also reflects on some of the records he reviewed in conjunction with the IME to which he felt were pertinent, which included the job description provided for the "Short Rail Weld Out." Dr. Bernstein noted that he reviewed the job description and multiple images of the types of welding activities alleged performed by Petitioner. The Arbitrator notes that the job description was prepared by Respondent, but still more descriptive and illustrative than the one provided to Dr. O'Leary. He also noted records reflecting a low back injury in 2018, referencing heavy weightlifting and squatting up to 300 pounds. He referenced the chiropractic treatment records from 2020 through 2022, which documented neck pain and treatment of the cervical spine. Dr. Bernstein referenced the MRI report from 7/18/2022 which described a right sided disc herniation at C6-7 impinging on the hemicord and right C7 nerve root, and some discogenic findings at other levels including C4-5 and C5-6. He also noted a progress report from Dr. Bell from 9/29/2022 where Petitioner had reported a 1-1/2-month history of right-sided neck pain, symptoms which reportedly came on suddenly. (RX 9).

Dr. Bernstein opined that the Petitioner "suffered a cervical disk herniation at the C6-7 level as a result of degenerative change." He opined that the condition was not related to any specific incident or event. Dr. Bernstein opined that he could not "attribute [the Petitioner's] cervical pathology, disk herniation, or his current symptoms to his work activity." Dr. Bernstein opined that the medical treatment rendered to date had been medically "reasonable and necessary and appropriate" but not causally related to a work injury. He opined that the Petitioner had "recurrent severe neck pain, which may be on the basis of adjacent segment discogenic changes." He opined that it was reasonable for him to proceed with a two-level anterior cervical fusion to relieve his current symptoms." (RX 9).

Dr. Bernstein indicated that he "would be happy to look at [the Petitioner's] prior MRI scan images and view it in comparison to the current MRI scan if it is obtained and forwarded to [him]." He noted that "It would also probably be valuable to evaluate [the Petitioner's] cervical disk arthroplasty with a CT scan to confirm that it is anatomically stable and correct and not responsible for [the Petitioner's] current symptoms." Dr. Bernstein concluded that based on his evaluation of the Petitioner, that he did not feel the Petitioner could work in his usual work activity. (RX 9).

The parties took with the evidence deposition of Dr. Bernstein on April 28, 2025. (PX 1). Dr. Bernstein testified consistently with his IME report. Dr. Bernstein testified that he "found no evidence that [the neck injury] was causally connected to his employment." RX 9, 11). He testified that "I didn't think there was anything unusual about his employment that puts unusual stress on the neck. I don't consider it a heavy physical job with overhead lifting, which is a common stressor for the cervical spine. There are jobs that are heavy construction and things like that where the physical loads are much higher than the normal physical activities of daily living so that those could be contributing factors to an injury. So, there was nothing specific about this case that I felt was reasonably associated with the disc herniation that he suffered. And for sure a disc degeneration that he had had nothing to do with his prior disc replacement and was just an accumulation of stress over time, a lifetime of stress."

Regarding the second occurrence, Dr. Bernstein testified that "You can even make an argument that the 2 levels of degeneration that he had in his neck, in and of themselves, or a stressor to the C6-7 level. Because of the disk space collapse and the lack of motion from C5 to C7, it puts excessive stress on the level above or below. So, it's not uncommon to see people who have disc degeneration in one or more segments and then have a herniated disc below the segment or above the segment. It's as if they blew out the mobile segment above or below the segment." (RX 9, 12-13).

Current Status

The Petitioner has not returned to work in any capacity for the respondent since he completed his shift on January 19, 2024. He alleges that the permanent work restrictions that were provided by Dr. O'Leary prevent him from returning to his employment as a welder for the Respondent. The Petitioner claims entitlement to all related medical benefits and TTD benefits at this time.

CONCLUSIONS OF LAW

The Arbitrator finds that the Petitioner failed to prove that his condition of ill-being is causally connected to the alleged repetitive nature of his employment. As a result of this finding, the Arbitrator denies the Petitioner's claims to all corresponding workers' compensation benefits.

(C) IN SUPPORT OF THE ARBITRATOR'S DECISION ON WHETHER AN ACCIDENT OCCURRED WHICH AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that Petitioner did not sustain an accident on June 21, 2022 or January 19, 2024 which arose out of and in the course of his employment with Respondent, as Petitioner did not meet his burden of proof in regard to the issue of causal connection. (See Section F).

(F) IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO HIS EMPLOYMENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that Petitioner did not meet his burden of proof that his current condition of ill-being is related to his work activities.

Petitioner bears the burden of proving medical causation by a preponderance of the evidence. Hutson v. Industrial Commission, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" Shell Petroleum Corp. v. Industrial Commission, 10 N.E. 2d 352 (1937) Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. Spankroy v. Alesky, 45 Ill. App.3d 432 (1st Dis. 1977). If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred because of an accident which arose out of and in the course of his employment. Nunn v. Industrial Commission, 157 Ill.App.3d (4th Dist. 1987).

In the instant case, the Petitioner alleges that he sustained a cervical disc herniation at C6-7 because of his employment as a welder for the Respondent, which led to a total of two surgeries, alleged right arm tremors, and alleged permanent work restrictions. He relies upon the medical opinions of Dr. O'Leary and Troy who opined that the Petitioner's current condition of ill-being in his cervical spine are related to the Petitioner's allegation that his chin is constantly and repetitively tucked to his chest while he operates a Bug-O welder robot.

The Petitioner's claims are weak under any scrutiny. Petitioner was not much in June of 2022. In fact, from 2018 to 2022, the Petitioner had established an irregular working pattern as he missed long period of time from work on multiple occasions. For instance, in 2021, Petitioner missed 42 weeks of work. (RX 5) and did not work from June 6th to June 21st of 2022 (RX 1) yet was very active, referencing 5 or more days of exercise per week including weightlifting. (PX 6 p.20) Furthermore, the Petitioner has a history with motorcycles and was involved in a daylong riding event two days before the manifestation event. (RX 16 p.39, 52) As a result of this activity, the Petitioner suffered from general aches and pains which are documented in his chiropractic records leading all the way up to his first alleged manifestation date of June 21, 2022. Those do not mention his employment as a causative factor. In the treatment dates leading up to the 6/21/22 date, there is nothing that would distinguish his treatment that predated the 6/21/22, from the treatment he received on and immediately following the 6/21/22 date. The Petitioner routinely reported pain all over his body.

When the Petitioner first completed an Application for Sick Leave on 6/22/22, he did not report neck or right arm issues. He reported that he had a back injury, and that it was not related to work. He reported that he was not sure how it happened. There is no reference to work demands. When the Petitioner first presented for medical treatment at UnityPoint Clinic, he reported back pain in addition to other ailments.

On his second Application for an Extension of Leave on 6/28/22, he was taken off work for thoracic pain, right shoulder pain and right elbow pain. His work status did not come from his original physician. He obtained his off-work status from his chiropractor, after Dr. Avila refused to extend his restrictions for him. (PX 6 p.12)

The Petitioner presented to Dr. O'Leary, his third-choice physicians, on July 5, 2022, which the date on which his restrictions from Dr. Kurtz expired. Dr. O'Leary is a spine surgeon who recommended an MRI of the cervical spine. Dr. O'Leary's office was willing to write off work slips at Petitioner's request for extended periods of time. He even wrote the Petitioner off work without seeing him in person on 9/27/22 when the Petitioner returned from his honeymoon.

The first documented report from Petitioner that his medical condition might be work-related on October 27, 2022, when he told Dr. O'Leary that his "neck flexed all night long." Dr. O'Leary had made no such earlier reference. Coincidentally, this examination took place 5 days after Dr. O'Leary was asked to author a narrative report. It is safe to conclude that Dr. O'Leary's initial notification that the condition might be work-related was from the Petitioner's workers' compensation attorney and not the patient. (PX 1 X3) From that point forward, the Petitioner's complaints are more consistent, and he related it all to his employment.

The Petitioner has been in control work status for the entirety of this case. The records reflect that the Petitioner was quite capable of obtaining restrictions that would keep him out of work. The medical records are littered with requests by Petitioner asking for his restrictions to be addressed or updated, with and without physical examinations. From the start, the Petitioner did not want physical therapy, documented by Dr. Avila. He underwent only had 7 sessions of physical therapy before he underwent his first surgery. While he had two injections, he said that he had an allergic reaction, but no such reaction is documented anywhere in the medical record.

The Petitioner pressured Dr. O'Leary into a full duty release effective 5/1/23 to reset his group disability benefits then have his restrictions changed again on 5/18/23 with office visits or a clinical exam. The evidence that we do have regarding the change of restrictions, is a phone call to Dr. O'Leary's office, and a nurse note. The Petitioner conveniently testified that he did not remember going back to work, but that his wife told him that he did that so that he could reset his benefits and then proceeded to offer details of how his benefits work. This simply is not credible. The work restriction manipulation does not end there. The Petitioner returned to full duty work for the Respondent on August 11, 2023. Once again, Dr. O'Leary had no evidence of this full duty release either. Despite the full duty release, the Petitioner was back to Dr. O'Leary's office on 8/24/23 complaining of right upper extremity pain and inquiring into whether his work was aggravating it. This is what prompted the first EMG/NCV on 9/13/23, which showed improvement with the cervical radiculopathy. Without objective to point to, the Petitioner appears to have held off with medical treatment until 1/4/24.

When the Petitioner presented to Dr. O'Leary on 1/4/24, an updated cervical spine MRI was prescribed, but Dr. O'Leary did not take the Petitioner off work. Not to be denied, the Petitioner went to the emergency room on 1/20/24 after awaking during the night with right arm cramping. It was the Petitioner who reported that his right arm was related to his neck, that he was awaiting an MRI of his cervical spine and a follow up with his doctor.

Petitioner secured work restrictions, turn them in and reapplied for Sick Leave. This time he stated that his neck condition was related to MIG welding at work and has not returned to work.

Dr. O'Leary recommended a second surgery on 1/30/24 and took the Petitioner off work again, but it was not scheduled until 12/2/24.

The Petitioner testified that he could have his restrictions changed with a phone call, and Dr. O'Leary testified that he would offer what his patients asked of him. When asked on cross-examination if Dr. O'Leary would lift his permanent work restrictions if he asked him, the Petitioner testified "maybe."

The underlying theory of the Petitioner's repetitive trauma claims are weak. While it may be true that Drs. O'Leary and Troy causally connected the Petitioner's cervical spine condition to his employment, it was based on the incorrect assumption that Petitioner's chin was constantly tucked to his chest while he operated the Bug-O welding machine. In truth, Petitioner's job had gotten physically easier since the introduction of the robot welder in 2016, petitioner had missed a lot of work in 2021 and had not work for Respondent since June 6th, which was three weeks for the manifestation date. On direct, Petitioner's testimony focused only on MIG welding, a task that he performs for approximately 20% of a work shift, stating further that he only "sometimes touched his chin to his chest while MIG welding." (T. p.17) In contrast, Dr. O'Leary often seemed to be under the impression that Petitioner's neck was bent and flex "all night long" while operating the robotic Bug-O welding machine. (PX 1 p.36, 45) Ironically, Petitioner's claim would have been stronger if he filed it before introduction of the Bug-O Welding machine in 2015 or 2016. After which, Petitioner's job has gotten easier. Dr. O'Leary did not see any video of the Bug-O robot in operation, nor did he see any of the previous medical records showing no connection of neck pain complaints to work activity, nor did he know of the motorcycle fundraiser or Petitioner's extensive lost time from work in 2021. As a result, Drs. O'Leary and Troy's medical opinions regarding causality in favor of Petitioner were not compelling to the trier of fact and are not based in the Petitioner's sworn testimony about his work activities. If they were privy to the entire record, as stated above, it's unlikely that they would still find causal connection again. And looking at the record as whole, Dr. Avi Bernstein's opinion of no causation seems to make the most sense.

Dr. Bernstein is a well-respected spine surgeon in Illinois. His medical opinions regarding this matter are credible. Dr. Bernstein had better job description than Dr. O'Leary. Dr. Bernstein's opinions are very simple. He reviewed the job and opined that the Petitioner's cervical spine condition is not causally connected to the employment. The basis for this opinion is that there was nothing in the employment that puts unusual stress on the neck. This makes much more sense than Dr. O'Leary's second effort, where he determined that the Petitioner's neck is routinely tucked to his chest "all night long." Dr. Bernstein did not dispute that there was a herniated disk at C6-7, he did not dispute the level of degeneration at the other levels, and he did not disagree with the surgery recommendations. He simply did not believe this cervical issue was from the employment. To his credit, Dr. Bernstein provided some additional enlightening opinions

on the Petitioner's condition and the recommendation for a second surgery by stating that the level of degeneration at the levels above and below C6-7 could very well have caused the herniation by itself. Dr. O'Leary simply moved to surgery and related everything to the Petitioner allegedly looking down at work despite having a poor understanding of the quantity and quality of the work activity. Dr. Bernstein's opinions and testimony is quite credible for this case.

It must be mentioned that there were two in-person Section 12 examinations that were conducted by Dr. Daniel Troy, and one addendum report. Unfortunately, after completing the second IME on March 11, 2024, Dr. Troy simply did not write a report. This stubbornness in and of itself ought to be taken into consideration when weighing the credibility of this expert. Dr. Troy testified that when he first offered a causal connection opinion in favor of the Petitioner, that this was based solely on what the Petitioner told him concerning his employment. He testified that if it was different, then his opinions would be different. When he allegedly reviewed the job description and authored his addendum report on 7/25/23, he simply stated that he reviewed the Petitioner's "job description with pictures and yes, it is causally related to the industrial accident." He testified that he had no recollection of the job description and that he did not have it in his file. His opinions are conclusory and not very persuasive. They are given little weight here.

That said, one area of Dr. Troy's testimony that can be helpful to the Petitioner generally speaking, were his opinions on the right arm tremors, as Dr. O'Leary and Dr. Bernstein had little to offer on this issue. Dr. Troy explained that the right upper extremity would not be related to the cervical spine because tremoring is a central process and not related to anything on the spine cord. It is an issue of wonder to the doctors and the trier of fact. The Arbitrator was given a demonstration of the tremors at trial and not entirely convinced of their authenticity.

Overall, these claims appears to be somewhat manufactured. If they were diamonds, they would have proved to be created in a lab instead of nature. The Petitioner initially went out of work for what he reported was a non-work related back issue. Once there was an MRI that objectively identified a herniated disc at C6-7, at some point thereafter, the injury was crafted to seem work-related. Petitioner's sick time in 2021 was extensive and never really explained. Petitioner's off work slips were massaged. The second application for adjustment of claim could be construed as a "clean up" of the deficiencies related to the original claim. Finally, the testimony about the Petitioner's deceased daughter was not relevant to the claim and appeared to be a blatant attempt to elicit sympathy from the court.

For the aforesaid reasons, the Arbitrator finds that the Petitioner failed to satisfy his burden of proof that his cervical spine issue is causally connected to his employment for Respondent. The Petitioner's claim for workers' compensation benefits is denied.

(J) IN SUPPORT OF THE ARBITRATOR'S DECISION AS TO WHETHER THE MEDICAL SERVICES PROVIDED TO THE PETITIONER WERE REASONABLE AND NECESSARY, AND WHETHER RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator found that the Petitioner did not satisfy his burden of proof with respect to the issues of accident and causal connection (see Sections C and F). As such, the Petitioner's claim to medical benefits is denied.

Furthermore, the Petitioner's medical treatment with Dr. O'Leary falls outside the 2-Doctor Rule. Section 8(a) of the Act requires an employer to pay for all "necessary first aid and medical services" but limits the employee's right of selection of physicians. The employer will be liable for the medical provider initially chosen by the employee, as well as any second medical provider chosen by the employee as well as their chain of referral. Outside of this 2-Doctor Rule, the employee at any time may obtain any medical treatment she desires at his own expense. 820 ILCS 308/8(a).

The Petitioner's first choice of medical provider was Kurtz Chiropractic. His second choice of physician was Dr. Avila at UnityPoint Clinic First Care. His third choice of physician was Dr. O'Leary. There is no chain of referral. The Petitioner went to each medical provider on his own. He testified to this effect. The treatment administered by Dr. O'Leary falls outside of the 2-Doctor Rule. Petitioner failed to prove that Dr. O'Leary was within the chain of referrals allowed under the Act.

(L) IN SUPPORT OF THE ARBITRATOR'S DECISION AS TO WHETHER THE PETITIONER IS ENTITLED TO TEMPPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator found that the Petitioner did not satisfy his burden of proof with respect to the issues of accident and causal connection (see Sections C and F). As such, the Petitioner's claim to temporary total disability benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC033960
Case Name	Vince Malson v. Komatsu
Consolidated Cases	22WC020794
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0306
Number of Pages of Decision	31
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Kevin Elder
Respondent Attorney	Quinn Brennan

DATE FILED: 10/29/2026

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VINCE MALSON,

Petitioner,

vs. NO: 24WC033960

KOMATSU,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causation, medical expenses, temporary total disability benefits, and prospective 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.

While the Commission affirms the Arbitrator's ultimate denial of Petitioner's claims, the Commission is compelled to strike certain hyperbolic statements contained in the decision and modifies the Arbitrator's decision as follows.

The Commission amends Paragraph 2 on Page 24 to read: "That said, one area of Dr. Troy's testimony that can be helpful to the Petitioner generally speaking, were his opinions on the right arm tremors, as Dr. O'Leary and Dr. Bernstein had little to offer on this issue. Dr. Troy explained that the right upper extremity would not be related to the cervical spine because tremoring is a central process and not related to anything on the spine cord. This issue is questionable to the doctors and the trier of fact. The Arbitrator was given a demonstration of the tremors at trial and was not convinced they were genuine."

The Commission amends Paragraph 3 on Page 24 to read: "The Petitioner initially went out of work for what he reported was a non-work related back issue. Once there was an MRI that objectively identified a herniated disc at C6-7, at some point thereafter, the injury appeared to be crafted to seem work-related. Petitioner's off work slips appeared to be manipulated. The second

application for adjustment of claim could be construed as an attempt to remedy deficiencies related to the original claim."

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 29 2026

O: 9/23/26
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	24WC033960
Case Name	Vince Malson v. Komatsu
Consolidated Cases	22WC020794
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Kevin Elder
Respondent Attorney	Quinn Brennan

DATE FILED: 11/21/2025

/s/Kurt Carlson, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Vince Malson
Employee/Petitioner/ kelder@goldfineandbowles.com

v.

Komatsu
Employer/Respondent/ qbrennandefenselaw.com

Case # **24** WC **33960**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington, IL**, on **August 29, 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, **January 19, 2024**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was*** 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 $**68,904.16**; the average weekly wage was $**1,325.08**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**34,452.21** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**34,452.21**.

Respondent is entitled to a credit of $**96,047.46** under Section 8(j) of the Act.

ORDER

Because the Petitioner failed to prove that he sustained an accident that "arose out of" and "in the course of" his employment, and because the Petitioner failed to prove that his current condition of ill-being is causally connected to his employment, all benefits are denied.

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

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

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

Kurt Carlson

Signature of Arbitrator

NOVEMBER 21 2025

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Vince Malson	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 22 WC 20794
	)	24 WC 33960
Komatsu	)	
	)	
Respondent.	)	

DECISION of THE ARBITRATOR

FACTS

This matter proceeded to a Section 19(b) hearing in Bloomington, IL on August 29, 2025. The issues at trial invovled accident, causal connection, medical benefits and TTD benefits.

This matter is a disputed repetitive trauma claim. The Petitioner alleges a cervical spine injury as the result of the alleged repetitive nature of his employment as a welder for the Respondent, Komatsu. He identifies two distinct manifestation dates: June 21, 2022 and January 19, 2024.

The Petitioner is presently a 49-year-old male who resides in Metamora, IL. (Test. 9). The Petitioner began working for Respondent Komatsu as a Welder in 2008. (Test. 10). The Petitioner testified that his job involves different requirements such as welding, grinding, air arcing, carrying, getting bags of flux, changing wire, and cleaning. (Test. 11). The Petiitoner works 8-hour shifts, 5 days per week with occasional overtime. (Test. 12). He stands on a concrete floor with rubber mats for the duration of his shift. (Test. 12). He testified that the job does not require much reaching, and occasional bending over. (Test. 12). He testified that he is required to lift up to 40 pounds. (Test. 12). There are occasional layoffs. (Test. 12).

The specific section in which the Petitioner welds is called the "substructure weldout." (Test. 10). The Petitioner testified that the work in this section involves the building of the substructure of a large tractor frame. (Test. 11). Within in this section, there is a specialized process called the "short rail weldout" which is 98-99% of the Petitioner's job. (Test. 13, 24). He testified that this process involves putting MIG passes into 4 seams for the root, followed by the placement of a submerged arc on top of the initial MIG placement to complete filling the remainder of the seams. (Test. 11). He testified that after the completion of this process, that the substructure goes through an ultrasound test. (Test. 17). If the structure does not pass the test, then the initial efforts at the weld need to be grinded out, and the process repeated. (Test. 17).

The Petitioner testified that in approximately 2015 or 2016, Respondent introduced a machine called the Bug-O Welder, which was brought in to make this welding process easier for its employees. (Test. 14, 94-95). The petitioner testified that from when he was hired in 2008 until the introduction of the Bug-O Welder in 2015 or 2016, that he would have to complete the submerged arc weldout by hand. (Test. 14). The Petitioner testified that at that time, the frame would sit on saw horses, leaving the frame positioned at slightly below waste level. (Test. 14). He testified and demonstrated the process where he would stand adjacent to the frame, that he would bend over at waste level with his head positioned above the weld, looking down at the weld as he would need to watch it. (Test. 15-16). The Petitioner testified that when he is performing MIG welding, that "sometimes" his chin is tucked to his chest. (Test 17).

The Petitioner testified that the Bug-O Welder in 2015 or 2016 eliminated the need for him to perform the submerged arc welding process by hand. (Test. 14). He described the Bug-O machine as a magnet on wheels that tracks down the rail bar of the short rail. (Test. 13). In his use of the Bug-O Welder machine, the Petitioner has to adjust the welder, the temperature of the welder, the voltage, the wire speed, and the control speed to make it perform the weld properly. (Test. 13). The machine itself does the welding. (Test. 13).

At trial, the Respondent presented evidence of a description of the Short Rail Weld Out process. (RX 8). The job description explains that the total time period to weld out a finished rail takes between 8 and 16 hours, depending on the specific part and model number. It identifies the shifts are 8.5 hours with a 30 minute lunch, two 15 minute breaks, 30 minutes for safety meetings, and 15 minutes for cleanup; and that it typically takes 2 shifts to complete a weld out, meaning that a singular weldout usually carries over to the next shift. (RX 8, 002). The job description includes a step-by-step description of the process testified to by the Petitioner, as well as photographs. The Petitioner testified that the job description was accurate, but that the depiction of the body positioning on page 3 during the process is inaccurate. (Test. 21-22). The Petitoner testified that when he is engaged in the act of MIG welding, that his body would be "turned towards the rail and that [he] would be leaning down" or more on top of it. (Test. 20). He also testified that with the Bug-O Welder, the machine can be positioned lower than the picture on page 4 when it reaches to lower part of the rail. (Test. 23). He testified that otherwise, the job description was "pretty accurate." (Test. 23).

Witness Shawn Trulson testified on behalf of the Respondent and the job demands. (Test. 87). Mr. Trulson has worked at Komatsu for 20 years and is the superindtendant of welding. (Test. 87). He worked on the floor welding for approixmately 13.5 years, followed by a supervisor position, and most recently, the superintendant. (Test. 88). Mr. Trulson testified that he has known the Petitioner for at least 16-17 years as they started off as union brothers on the floor. (Test. 88). In regard to the job demands, Mr. Trulson testified that 2 hours of the process was dedicated to MIG welding, while 6 hours would be dedicated to the use of the Bug-O Welding machine. (Test. 93). He testified that the Bug-O is "an advanced form of sub arc to where you don't have to hold the gun. You can change the settings, the operator is there to watch the weld tro make sure it's going in good and adjust

the head to make sure the weld wire is going in the approprate spot." (Test. 93-94). He testified that it is a less physically demanding job. (Test. 94). He testified that employees who are injured in the workplace are encouraged to notify their supervisors. (Test. 97).

From 2018 to 2022, the Petitioner missed several periods of time from work. (RX 5). In 2019, the Petitioner missed time from work from 2/15/19 to 7/1/19 (19-3/7ths weeks). In 2020, he missed time from 7/28/20 to 8/7/20, and 8/10/20 to 8/14/20 (2 weeks). He missed time from work from 10/18/20 to 3/5/21 (19-5/7ths weeks). He missed time from 4/5/21 to 4/17/21 and from 4/23/21 to 9/10/21 (23-1/7ths weeks). (RX 5).

While away from work, the Petitioner is documented to be physically active and he testified to the same. (Test. 62). He has a documented history of weightlifting, general household activities and is a motorcycle enthusiast. (RX 14, 16; Test. 60-62). On June 18, 2022, just prior to alleged first date of loss, he hosted a daylong motorcyle ride and benefit. (Test. 61-61, RX 16).

June 2022 Manifestation Date

The Petitioner testified that in June 2022, that he began experiencing "spasming, burning, tingling sesations throughout [his] neck and [his] upper trap area." (Test. 24). He testified that he "noticed down [his] right arm some more tingling, numbness into [his] fingertips." (Test. 25). He testified that there were no particular activities that brought on his symptoms. (Test. 25). He testified that "It just kind of came on one day and I tried to work through it and it was – the more I tried to just continue on with my daily life, it just kept hurting more." (Test. 25). He testified that he felt that his pain was at its worst when he was MIG welding. (Test. 26), but he to be led to this testimony by attorney on direct examination.

The Petitioner has a lons-standing history of chiropractic treatment at Kurtz Chiropractic that both predates and runs concurrent with the pending workers' compensation matter. His first documented chirorpractic treatment date was on April 20, 2017, when the Petitioner presented with a variety of pain complaints, after he woke up the day prior after DL (dead lift), yardwork, ax chopping tree, and gardening. (RX 14, 075).

The Petitoner underwent periodic chiropractic treatment at Kurtz Chiropractic from 2017 up until and after the alleged June 21, 2022 manifestation date. (RX 14). Over this period of time, the Petitioner reported having pre-exisitng issues with his cervical, thoracic and lumbar spine areas, both shoulders, his right and left elbows, his left wrist, numbness and tingling into his right hand and fingers, his right hip, and his lower rib cage area. Petitioner was documented to have been active with weightlifting and various extracurricular activities.

On June 13, 2022, the Petitioner presented to Dr. Kurtz with pain in between his shoulder blades, elbows, back and neck. Limited information is contained in this report. (RX 14, 022).

On June 18, 2022, (Saturday) the Petitioner sponsered a memorial benefit ride on behalf of his deceased daughter; activities included a daylong mortorcycle ride, silent auction and DJ. (RX #16 p.11) The ride began in Germantown Hills at 11:00 am, included three stops and ended at 5 pm back to Germantown Hills. (RX #16 p.41)

June 19, 2022 (Sunday) was Father's Day.

On June 20, 2022, the Petitioner presented to Dr. Kurtz with "considerably worse" pain. He reported pain in between his shoulder blades, as well as his shoulders and elbows. Limited information in contained in this report. (RX 14, 020).

In fact, there appears to be a significant number redacted records from Kurtz Chiropractic. Specifically, the records for June 20 refer to exam findings and postural analyisis which are are not found in the exhibit.

On June 21, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. (RX 14, 018).

On June 22, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. He reported that "he got better for awhile, but woke up with it again." (RX 14, 016).

On June 22, 2022, the Petitioner also presented to UnityPoint Clinic First Care with short term disability paperwork. (PX 6, 18). The Petitioner reported that he had back pain that started the week prior. He reported no recent injuries. The Petitioner was evaluated by Dr. Carlos Avila. (PX 6, 25). The Petitioner reported right shoulder pain and back pain in the right upper side. The Petitioner denied any specific injury or fall. The Petitioner requested paperwork to be filled for work since he had not been able to go to work due to neck and back pain. The Petitioner reported he was self-medicating by taking cyclobenzaprine (muscle relaxant) from an old back injury. Dr. Avila diagnosed the Petitioner with torticollis and prescribed the Petitioner Meloxicam for 3 days. (PX 6, 33). He wrote the Petitioner "off work" through 6/27/22. (RX 1).

The medical definition of torticollis, also known as wry neck, is characterized by an abnormal, asymmetrical position of the head and neck, typically involving a tilt to one side with rotation toward the opposite side, often due to spasm or contraction of the neck muscles. It can be congenital (present at birth) or acquired later in life. Cleveland Clinic, Torticollis (Wryneck): Symptoms, Causes & Treatment (Feb. 28, 2022), https//my.clevelandclinic.org/health/diseases/22430-torticollis

The Unity Point records show that the cyclobenzaprine was prescribed by Dr. Carlos Avila (petitioner's primary care physician) from an older prescription, but those records are also not in evidence. (PX 6 p.24)

On June 22, 2022, the Petitioner also completed an Application for Sick Leave from

work. (RX 1). The Petitioner testified that he completed this report himself because this was his handwriting. (Test. 64). The report reflects the last date on which he worked was 6/6/22! When asked for the reason for sick leave, the Petitioner reported "Back issues." When asked how the injury occurred, the Petitioner reported "not sure." When asked if the injury was work related, the Petitioner reported "no." When asked his physician's last name and address, the Petitioner reported "Carlos" at 2535 E. Washington St. in East Peoria, which Petitioner confirmed through testimony was Unity Point Healthcare. (RX 1, Test. 64).

On June 23, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. (RX 14, 014).

On June 27, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported pain in between his shoulder blades and that his muscles were very tight. He also reported numbess in his right thumb and index finger. (RX 14, 012).

On June 28, 2022, the Petitioner returned to Dr. Carlos Avila at UnityPoint Clinic First Care requesting that his disability paperwork be extended. (PX 6, 10). He had been seen the previous week for torticollis and was prescribed anti-inflammatories and muscle relaxants. Petitioner reported feeling better, but not completely recovered. Dr. Avila noted that when he last examined the Petitioner, he told the Petitioner that if he was not fully recovered by his follow up, that he would prescribe physical therapy. (PX 6, 10). The Petitioner reported that he was seeing a chiropractor and that he did not want physical therapy. (PX 6, 10). Dr. Avila documented that he was not able to perform a physical examination of the Petitioner because the Petitioner "got upset because disability extension paperwork won't be filled at least he sees physical therapy for treatment and evaluation." (PX 6, 13). Dr. Avila documented that the Petitioner planned to take the disability paperwork to be completed by his chiropractor. No additional instructions or recommendations were offered at this visit. (PX 6).

On June 28, 2022, the Petitioner later presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was "a little better" on this date. (RX 14, 010). The Petitioner testified that "part of" the reason that he went to Dr. Kurtz on this date was to obtain work restrictions because Dr. Avila would not give them to him. (Test. 68).

On June 28, 2022, the Petitioner later submitted an Application for Extension of Disability Benefits from work. (RX 2). This report was completed by his chiropractor, Dr. Kurtz. Dr. Kurtz reported that she began treating the Petitioner on 6/20/22. She projected the dates of his disability to ranged from 6/21/22 through 7/4/22. Her diagnosis of the Petitioner was pain in the thoracic spine, pain in the shoulder, and pain in the elbow. Dr. Kurtz noted that "[petitioner] is steadily improving and should reach MMI on or about 7/4/22." (RX 2).

On June 29, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was "feeling pretty good" the day prior,

but that he woke up on this morning and his "shoulder down to the elbow were brutally painful." His neck, upper back, and mid-back were adjusted. (RX 14, 008).

On June 30, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He reported that the pain in between his shoulder blades was feeling better, but that it was still an issue for him. (RX 14, 006).

On July 5, 2022, the petitioner presented to Dr. O'Leary at Midwest Orthopedic Center for an unscheduled, walk-in examination. (PX 3; Test. 69; PX 1, 6-7). Dr. O'Leary is a board-certified spine surgeon. On the Intake Form dated 7/6/22, the Petitioner reported that he was referred by Dr. Kouri. He reported that the reason for this visit was "tingle in right arm." He reported that his pain location was his "right arm." (PX 3, 106). He reported that the pain was worse with "any activity." The report specifically asked if the Petitioner planned to file a lawsuit or a workers' compensation claim, and the Petitioner reported that he did not. (PX 3, 106). Dr. O'Leary documented that the Petitioner was a right-handed welder, and that he started having numbness and tingling in his right shoulder and spasms, and that he felt like "everything is on fire." (PX 3, 102). Dr. O'Leary noted that the Petitioner had undergone chiropractic treatment with limited relief. Dr. O'Leary diagnosed the Petitioner with cervical disk displacement and cervical radiculopathy, with the condition worsening. He recommended an MRI of the cervical spine. He recommended a Medrol Dosepak, tramadol and gabapentin. Dr. O'Leary took the Petitioner off work. (PX 3, 102).

On July 5, 2022, the Petitioner submitted a second Application for Extension of Disability Benefits. (RX 3). This report was completed by Dr. Patrick O'Leary on this date. Dr. O'Leary reported that he diagnosed the Petitioner with cervical disc displacement and muscle weakness. He represented that he had prescribed the Petitioner medication and prescribed a cervical spine MRI. He continued the Petitioner off work until after the MRI, or 9/5/22. (RX 3).

On July 18, 2022, the Petitioner underwent an MRI of his cervical spine. (PX 3, 96-97). The MRI was interpreted to reveal: 1) right-sided C6-C7 disc herniation impinging on the right hemicord and the right C7 nerve root; 2) central C4-C5 disc herniation indenting the anterior thecal sac; 3) cervical spondylosis with no other sides of cervical disc herniation or cervical spinal stenosis or cervical cord compression; and 4) moderate right C5-C6 foraminal stenosis. (PX 3, 96-97).

On July 21, 2022, Dr. O'Leary recommended a right sided C7-T1 epidural steroid injection. (PX 3, 95).

On July 25, 2022, The Petitioner reported that he was interested in trying a steroid injection with Dr. Bell. (PX 3, 94).

On August 2, 2022, the Petitioner presented to Dr. Robbye Bell for the recommended injection. (PX 3, 83-92). On the handwritten intake form, the Petitioner reported a 1.5-month history of right-sided neck pain. (PX 3, 87). The Petitioner reported

that this did not come following a particular injury, specifically stating that this was not a work-related injury. He reported that his pain came on suddenly. (PX 3, 87). He reported that he experienced shooting and spastic pain, and that he experienced numbness and tingling down into his right upper extremity. A right paramedian C7-T1 interlaminar epidural steroid injection was administered at this visit. (PX 3, 87).

On September 2, 2022, the Petitioner presented to Dr. Bell for a second epidural steroid injection. (PX 3, 80-82). The Petitioner reported that the last injection provided some noticeable pain relief, but the same pain had returned. He complained of neck pain that radiated down his right arm. He reported weakness and numbness in the right arm. He reported that "his right arm strength is definitely limiting what he can do." A right paramedian C7-T1 interlaminar epidural steroid injection was administered at this visit. (PX 3, 80-82).

On September 10, 2022, the Petitioner got married. (Test. 54, RX 16). He testified that the wedding had been planned for over 2.5 years since he was initially engaged. (Test. 55). He testified that he and his wife honeymooned in Jamaica, and that he sustained no new accidents over this time period. (Test. 56).

On September 26, 2022, Dr. O'Leary completed an updated work status report for the Petitioner. (PX 3, 77). No physical examination was conducted on this date. The work status report states that the Petitioner should remain "off work" from 9/5/22 until his next appointment on 10/27/22. (PX 3, 77).

On September 27, 2022, the Petitioner submitted a third Application for Extension of Disability Benefits. (RX 4). Dr. O'Leary took Petitioner off work thorugh 10/28/22. (RX 4).

On September 29, 2022, the Petitioner presented to Dr. Bell for follow-up. (PX 3, 78-79). He underwent a second injection 4 weeks earlier. He reported that his spastic radicular pain had improved. He reported right-sided neck pain that caused him headaches. He reported noticeable weakness in the right shoulder and right upper extremity. He reported weakness in his right pectoral muscle. He stated that he could not perform a push-up during his work outs. He was unable to reach across his chest or behind his back with his right arm. Dr. Bell referred the Petitioner back to Dr. O'Leary for medical treatment. (PX 3, 79).

On October 11, 2022, the Petitioner presented to Dr. Kurtz for chiropractic care. He told Dr. Kurtz that he had a herniated disc in his neck at C6-C7. He reported pain in his "back and neck." The Petitioner reported having two steroid injections, to which he reported that he was allergic to. (RX 14, 002).

On October 22, 2022, Dr. O'Leary authored his first of two narrative reports (see below).

On October 27, 2022, the Petitioner returned to Dr. O'Leary for an in-person examination. (PX 3, 74-75). The Petitioner reported that he was doing better, but that he

still had some symptoms. Dr. O'Leary documented that the Petitioner ran a welding machine at work, and that his "neck flexed all night long." The Petitioner reported that he did not feel that he could perform that work, and that he preferred to go back to light duty. (PX 3, 74). Dr. O'Leary felt that the Petitioner would benefit with physical therapy, so a course of PT was prescribed. Dr. O'Leary offered the Petitioner light duty work restrictions of no lifting over 5 pounds, no lifting overhead, no welding, and no cervical flexion. (PX 3, 76).

On November 2, 2022, the Petitioner called Dr. O'Leary's office requesting that his physical therapy be prescribed at Athletico in East Peoria. (PX 3, 73).

On November 8, 2022, the Petitioner presented for his initial PT consultation at Athletico. (PX 4, 39-51). On the handwritten intake form, the Petitioner reported that he was present for a neck injury. He reported that this was not a workers' compensation injury. He reported that he was a "welder" and that his attorney was Kevin Elder. He reported that his symptoms began on 6/20/22. (PX 4, 50). The Petitioner reported that "He woke up really sore on Father's Day" (6/20/22). (PX 4, 44-45).

The Arbitrator takes judicial notice that Father's Day in America is always the third Sunday in June. Therefore, Father's Day in 2022 was on the 19th, not the 20th as stated in the records and it bears repeating that the motorcycle fundraiser ride was on the 18th.

In any event, back at Athletico, the plan forward was to undergo PT 3 times weekly for 6 weeks. (PX 4, 44-47).

On November 28 and 29, 2022, the Petitioner called Dr. O'Leary's office seeking updated short term disability paperwork, as "they gave him until the beginning of October." He reported having talked to his physical therapist about getting an appointment moved up. An appointment was scheduled for 12/6/22. (PX 3, 70-72).

On December 6, 2022, the petitioner presented to Dr. O'Leary who recommended disc replacement surgery because the Petitioner already had spondylosis at C5-6 and C4-5 which could require treatment in the future, and that a disc replacement surgery made the likelihood for future treatment less likely. Dr. O'Leary also suggested that the Petitioner could require treatment of the right shoulder with a specialist. (PX 3, 68). The Petitioner would remain on the same light duty work restrictions until the 1/27/23 surgery date, at which time he would be "off work."

On December 8, 2022, there was telephonic communication between the Petitioner and Dr. O'Leary's office regarding the surgery date. Dr. O'Leary's office wished to move back surgery to 1/30/23. The Petitioner wished to move up surgery to 1/23/23. Surgery was rescheduled for January 23, 2023. PX 3, 65-66).

On December 12, 2022, the Petitioner was discharged from PT at Athletico after undergoing a total of 7 sessions. (PX 4, 36-37). The Petitioner reported that he missed PT because of the flu, and also because his lower back went out. The Petitioner reported

that he saw his doctor on 12/6/22, and "they only want him to work on his shoulder, because he is going to have surgery on his neck." Petitioner reported that he would not be able to attend any more sessions of PT until after his neck surgery because his mother and wife had medical issues and he had planned to take care of them. (PX 4, 36).

On December 14, 2022, the Petitioner called Dr. O'Leary's office regarding his disability paperwork. (PX 3, 63).

On January 23, 2023, the Petitioner underwent surgical anterior cervical disk arthroplasty at C6-7 with Dr. O'Leary. (PX 3, 7-9).

On February 21, 2023, the Petitioner presented to Dr. O'Leary for a 4-week follow up following surgery. Petitioner reported that his pain symptoms were "essentially gone." He reported that his right arm symptoms and mobility had improved, and that his neck symptoms were gone. He reported swallowing discomfort. He was not taking pain medications at this time. Petitioner was instructed to remain within his restrictions, and to avoid getting the incision site wet. He was instructed to follow up in 6 weeks. He was continued off work. (PX 3, 45-47).

On March 13, 2023, the Petitioner initiated a course of physical therapy at Athletico. (PX 4, 19-23). On the handwritten intake form, the Petitioner reported that this was a workers' compensation injury. (PX 4, 25). He reported that his onset of symptoms was 6/20/22. He reported that he was a welder, and that his attorney was Kevin Elder. (PX 4, 25). The Petitioner's pain levels were 0 out of 10. (PX 4, 19). The Petitioner's greatest complaints were right upper extremity weakness, chest, and upper back weakness.

On March 2, 2023, Dr. O'Leary authored his second of two narrative reports (see below).

On April 4, 2023, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 42-43). The Petitioner reported a resolution of his pain following surgery, but he had frustration with the loss of function in his chest wall and right triceps. He reported that he could not turn his head fully to the right. He reported that he had a labor-intensive job with a 40-pound lifting requirement. He reported "that he can barely do any kind of activity without ongoing physical therapy concerned about his strength loss and others." Dr. O'Leary told the Petitioner that he could "continue to do physical therapy." Dr. O'Leary explained to the Petitioner that his recovery could take several months. Dr. O'Leary told the Petitioner that his condition may never be normal, and that he did not anticipate the injury being lifestyle changing. He told the Petitioner to contact him "when he feels like he is ready to go back to work." The Petitioner "had a number of questions today about whether going back to welding might also contribute to the same kind of condition happening again." Dr. O'Leary advised that he had "no way to predict that nor would [he] necessarily restrict the [Petitioner] much longer with a healed disc replacement at this juncture." Dr. O'Leary instructed the Petitioner to follow up in 2 months with flexion-extension views of the cervical spine. (PX 3, 42-43).

On May 5, 2023, the Petitioner presented to IWIRC for a fitness for duty evaluation following at C6-C7 disc replacement surgery. (RX 12). The report reflects that Dr. O'Leary had released the Petitioner to full duty work on 5/1/25, and that Respondent had requested the fitness for duty evaluation. The Petitioner reported that he felt ready to go back to work. After a physical evaluation where the Petitioner demonstrated no limitations, he was cleared to return to full duty work on this day. (RX 12).

The Petitoner testified that he did not recall going back to work in May 2023. He testified that he had spoken to his wife about it, and that he went back to work "to reset [his] medical pay so [he] could still continue getting paid while [he] was recovering from surgery." (Test. 32). The Petitioner testified that he "believed" that he asked Dr. O'Leary to lift his restrictions at or around May 2023 but did not remember. (Test. 72). He testified that he asked Dr. O'Leary to do this because he wanted to have his benefits reinstated. (Test. 72). He testified that "you get a certain amount of time to get your 80 percent. If you go back for a certain amount of time, you can reinstate and go back out on the same problem and reinstate your 80 percent benefits." (Test. 73). Petitioner believed he saw Dr. O'Leary in person but acknowledged that this also could have been done by telephone. (Test. 72). Petitioner acknowledged that Dr. O'Leary would be willing to adjust work restrictions without a physical examination (Test. 72). He testified that whenever he would call into Dr. O'Leary's office, he always talked to an assistant. (Test. 72).

On May 16, 2023, an incident report was prepared at Komatsu. (RX 13). The incident report documented that the Petitioner presented to Medical on 5/16/23 with complaints of right arm fatigue which is causing tremors. The Petitioner related that his right arm had weakness, muscle atrophy, and the tremors are "new onset" after he had neck surgery in January. The tremors were documented to be "somewhat positional" as the pronated position caused increased tremor-like movement. The Petitioner reported that he had just finished welding which caused great fatigue and he felt unable to continue welding. He reported similar symptoms after his shift on the previous date which resolved within a couple of hours with rest. The nurse and supervisor instructed the Petitioner to contact his physician and to report the plan. (RX 13).

On May 18, 2023, Dr. O'Leary completed an updated work status report for the Petitioner. (PX 3, 41). No physical examinations were conducted on this date. The work status report states that the Petitioner can return to work with no use of a grinder, and no consistent lifting over 40 pounds with the right arm. The report states that no return appointment was needed. (PX 3, 41).

On June 12, 2023, the Petitioner presented for a Section 12 independent medical examination with Dr. Daniel Troy (see below).

On July 25, 2023, Dr. Troy authored an addendum IME report (see below).

On July 27, 2023, an updated PT note from Athletico indicates the Petitioner had attended 31 sessions of physical therapy, while cancelling 4 appointments. (PX 4, 16-

18). None of the PT records were submitted into evidence. The Petitioner had reported that "he had a pre-trial this week, and they are waiting on job description from IME doctor." The Petitioner reported that "once it is amended and correct, he should be returning to work with restrictions." Petitioner reported that his right upper extremity was slowly getting stronger and that he still had difficulty reaching behind his back. (PX 4, 16).

The Petitioner returned to full duty work for Respondent on August 11, 2023. (Test. 34). He testified that he went back to work in his normal capacity. (Test. 34). He testified that he did not remember if he saw Dr. O'Leary in person or consulted by telephone before returning to full duty work. (Test. 75). He testified that he told Dr. O'Leary that he needed to go back to work. (Test. 75).

On August 24, 2023, the Petitioner presented to Dr. O'Leary for an in-person consultation. (PX 3, 39-40). Dr. O'Leary noted that the Petitioner was back to work and working normally. Petitioner was no longer engaged in formal physical therapy and was doing home exercises. The Petitioner reported that his right arm felt weak. He reported that he did not get on his Harley motorcycle or ride it because he was concerned that if the bike were to spill or otherwise, that he would not have the arm strength to handle it. The Petitioner wondered if it was something that he aggravated, or if it was coming back. Dr. O'Leary told the Petitioner that "these things take a year to a year and a half to completely recover." Dr. O'Leary ordered an EMG/NCV of the right upper extremity to "check the status of the nerve" as well as determine if there was anything else to be detected. Dr. O'Leary opined that the Petitioner could continue working in a full duty capacity. (PX 3, 39-40).

On September 13, 2023, the Petitioner underwent an EMG/NCV with Dr. Craig Carmichael at Therapeutic Spine & Pain Center. The study revealed a "severe right C6 and C7 radiculopathy." There were still sparse fibrillation potentials in the triceps and pronater teres. The findings were hopeful for continued Wallterian regeneration and substantially more improvement particularly in the triceps and pronator teres over the next 6 to 9 months. (PX 3, 37-38).

On January 4, 2024, the Petitioner presented to Dr. O'Leary for an in-person examination. (PX 3, 34-35). The Petitioner was approximately 1 year removed from surgery. The Petitioner reported symptoms which were like those that he reported when he first presented for medical treatment the previous year. He reported he felt the same as he did prior to his surgery. The Petitioner reported that his right arm was shaking all the time. Dr. O'Leary reviewed the EMG/NCV from 9/13/23 and noted a right upper extremity radiculopathy evidenced by C7 on EMG. Dr. O'Leary also noted that the EMG suggested evidence of ongoing recovery at this time. Dr. O'Leary represented that he was "not exactly sure what is going on." He recommended an updated MRI of the cervical spine with metal suppression so that he could visualize the C6-7 and C5-6 levels. Dr. O'Leary recommended the MRI so he could better inform the Petitioner on potential symptom drivers. The Petitioner was told that he could continue to work in a full duty capacity. (PX 3, 34-35).

January 19, 2024 Manifestation Date

The Petitoner testified that when he went back to work in August 2023, that the alleged tremors in his right arm got worse. (Test. 40). He testified that it made it difficult for him to work. (Test. 40).

The Petitioner testified that on January 19, 2024, that he had to MIG weld a 980 rail which takes longer. (Test. 40). He testified that he told his supervisor Eunice that he was in a lot of pain. (Test. 41). He testified that he got an ice pack and sat down for the rest of his shift because he had already achieved his production and his area was set up for the next shift. (Test. 41). He testified that no accident reports were completed at that time. (Test. 41, 77).

On January 20, 2024, the Petitioner presented to the emergency room at Carle Health Methodist. (RX 15). He presented with cramping in his right arm. (RX 15, 040). He reported that "he had surgery in his neck and knows that he has nerve damage on the right side secondary to chronic neck issues." He reported that he had increased pain and that he had an MRI scheduled for his neck in 4 days to assess for cervical disc bulges. He reported that he worked as a welder, and that he had an increase in the amount of work recently. He was concerned that he pushed himself too hard. At approximately 3:00 a.m. on this date, he woke up with severe pain and cramping. He reported that his shoulder, biceps, forearm, and upper chest seemed to all tense at once causing extreme pain. He was unable to straighten his arm on his own. He reported that if he and his wife forcibly straighten his arm, that it seemed to make his muscles relax. He reported that this was happening every 20 seconds or so. He was unsure if trying to use the arm brings the spasm and that he had tried to do his best to avoid using the arm since the symptoms began. He reported that during the cramping his fingertips will have a tingling sensation. He denied any actual pain or spasm in the neck. He reported that at its worst, the pain would radiate into his back and towards his shoulder blade. He denied any new actual injury or trauma. The Petitioner was given Decadron to help with nerve pain and he was encouraged to keep his appointment for the MRI and to contact his spinal surgeon the first thing on Monday morning. (RX 15, 044).

On January 22, 2024, the Petitioner submitted an Application for Sick Leave. (RX 6). When asked for the reason for the sick leave application, the Petitioner reported "neck." When asked how the injury occurred, the Petitioner reported "MIG welding a rail." The Petitioner reported that on 1/19/23, that he had "pain from neck down my back." When asked if the injury was work related, the Petitioner reported "yes."

On January 22, 2024, an incident report was prepared at Komatsu. (RX 7). The incident report documented that the Petitioner presented to Medical on 1/22/24 with paperwork from an ER visit on 1/20/24. Petitioner reported that he worked a full shift on Friday (1/19/24) and was performing MIG on a large part. He reported that he went home, iced his neck, and went to bed. He reported that during the night, he had his wife take him to the ER, and that the ER wrote him "off work" until 1/27/24. The report noted that the

Petitioner was scheduled to undergo an MRI on 1/30/24. The report noted that his doctor would not write him an off work note until he was seen on 1/30/24. The Petitioner wished to stay off work until he knew what the MRI showed. The RN taking the report advised the Petitioner to be seen at a walk-in clinic for note to continue absence. (RX 7).

On January 23, 2024, the Petitioner underwent an updated MRI of his cervical spine without contrast. (PX 3, 31-32). The MRI was interpreted to reveal: 1) status post C6-7 disc arthroplasty which appeared solid with no extrinsic compression of thecal sac, 2) right paracentral C5-6 disc herniation indenting the anterior thecal sac, 3) central C4-5 disc herniation indenting the anterior thecal sac, and 4) moderate right mild left C5-6 foraminal stenosis. (PX 3, 31).

On January 30, 2024, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 28-29). The Petitioner reported that on 1/19/24, while he was at work the pain was so bad he had to leave work and go to the emergency department at Methodist and they gave him a muscle relaxer. He reported symptoms of pain in the neck into the shoulder blades occasionally down the spine mostly into his right upper extremity, numbness and tingling. Dr. O'Leary reviewed the updated MRI films, noting that the disc prosthesis at C6-7 was stable. He noted that there was "more evidence of herniated disc he does have findings on the right side at C5-6 consistent with foraminal stenosis disc osteophyte complex MRI confirms also has what appears to be substantial disc centrally at C4-5 which may be slightly progressed from preoperative imaging." Dr. O'Leary diagnosed the Petitioner with "symptomatic spondylosis and stenosis at C5-6 and a central disc osteophyte at C4-5." Dr. O'Leary opined that "this is really no longer amenable to ongoing nonoperative management he has significant symptoms which started really back in November but got really bad January 19 he is not a candidate for injections." Dr. O'Leary recommended a vocal cord analysis and a C4-C6 anterior cervical discectomy and fusion. Dr. O'Leary took the Petitioner "off work." (PX 3, 28-29).

On March 11, 2024, the Petitioner underwent an updated Section 12 examination with Dr. Daniel Troy (see below).

On September 19, 2024, the Petitioner underwent a Section 12 independent medical examination with Dr. Avi Bernstein by agreement of the parties (see below).

On November 27, 2024, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 25-26). Surgery in the form of C4-5 and C5-6 ACDF was scheduled for 12/2/24. Dr. O'Leary planned for the Petitioner to be off work for 8 to 12 weeks following surgery. Dr. O'Leary hoped that the Petitioner's pain would be improved and he would be ready to return to functional employment of some sort after completion of successful surgery. (PX 3 25-26).

On December 2, 2024, the Petitioner underwent C4-C6 ACDF surgery with Dr. O'Leary. (PX 3, 3-5). No complications were noted. The Petitioner's post-operative diagnosis was: 1) cervical spondylosis with radiculopathy, 2) cervical foraminal stenosis, and 3) status post cervical disc displacement C6-C7. (PX 3, 3-5).

On December 26, 2024, the Petitioner presented to Dr. Cicarrelli PA for surgery follow up. (PX 3, 22-24). He reported that his preoperative neck pain symptoms had begun to improve, although his recovery was slower than the first surgery. He reported more swallowing discomfort and voice raspiness. He reported mild posterior paraspinal cervical pain but he did not require the use of pain medication. Dr. Cicarrelli told the Petitioner that his symptoms were consistent with routine postoperative recovery. The Petitioner was placed on work restrictions of no excessive overhead activity, no excessive cervical range of motion, no ambulating on unsteady/uneven surfaces, and no soaking/submerging the incision. He was prescribed a Medrol Dosepak. He was instructed to follow up in 6 weeks. (PX 3, 22-24).

On February 6, 2025, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 20-21). The Petitioner reported being "sore." He reported that turning his neck and lateral bending was limited. Dr. O'Leary recommended a course of physical therapy. He kept the Petitioner "off work." He instructed the Petitioner to follow up in 2 months. (PX 3, 20-21).

On April 24, 2025, the Petitioner presented to Dr. O'Leary for follow up. (PX 3, 16-17). The Petitioner did not undergo any physical therapy. The Petitioner reported that his neck pain was slightly better but that he still had shaking in his right arm when he pronated his right forearm. Dr. O'Leary noted that they "talked a little bit about his job today and about different types of activities he does with his job and it does appear that he has a significant component of neck flexion specifically holding his right arm abducted with neck flexed when he is MIG welding and then also just looking down or neck flexed position repetitively while running the Bungo welder." Dr. O'Leary recommended that the Petitioner undergo a functional capacity examination. He noted that "ultimately my sense is that he probably should not return to the welding job he had." Dr. O'Leary also recommended a repeat right upper extremity EMG. He opined that "I still really do not understand the spontaneous tremors but to see if there has been any nerve root recovery since the original injury which was a C6-7 disc herniation." Dr. O'Leary recommended work restrictions of no overhead work, no lifting more than 15 pounds, and no repetitive neck flexed positions." (PX 3, 16-17).

On May 15, 2022, the Petitioner presented to Athletico at the Peoria Heights location for a functional capacity examination. (PX 4, 1-14). The report states that the Petitioner provided a "valid representation of [his] functional abilities based on [petitioner] demonstrating consistent effort." No objective validity testing was included in the FCE report. The Petitioner demonstrated the ability to perform in the "medium" physical demand level, evidenced by his ability to lift to 50 pounds. The Petitioner was also documented to be able to lift 65 pounds from 12 inches to waist level which is considered the "heavy" demand level. (PX 4, 1-14).

On May 22, 2025, the Petitioner underwent a repeat EMG/NCV with Dr. Carmichael. (PX 3, 14-15). The study was interpreted to reveal severe right C6 and C7 radiculopathy that appeared "old," without any evidence of active denervation. The

findings were described as “very similar” to the EMG from 9/13/23. There was no evidence of other right upper extremity neuropathy, plexopathy, or radiculopathy on this study. (PX 3, 14-15).

On June 10, 2025, the Petitioner presented to Dr. O’Leary for follow up. (PX 3, 11-12). He underwent the EMG and the FCE. The Petitioner reported that after the FCE, he had a headache for a “couple of days” because the FCE was “very rigorous.” He reported that he felt “mainly limited in his ability to turn his neck side-to-side” and “after use of his right arm for extended period of time it starts to shake.” Dr. O’Leary felt that the Petitioner was “at a healing plateau” and that the Petitioner had reached maximum medical improvement. Dr. O’Leary noted that the FCE was “valid” and showed that the Petitioner could occasionally lift to 50 pounds well within the medium category of work. Dr. O’Leary gave the Petitioner permanent work restrictions of no lifting over 50 pounds, lifting of 50 pounds on an occasional basis only, and to avoid prolonged neck flexion. (PX 3, 13). The Petitioner was released from medical care. (PX 3).

Testimony of Dr. Patrick O’Leary

On October 22, 2022, Dr. O’Leary authored a narrative report at the request of Petitioner’s counsel. (PX 1, Dep. Ex. 3). Dr. O’Leary acknowledged that he began treating the Petitioner on 7/5/22 and it was his understanding that the Petitioner was a welder, and that the Petitioner operated a Bogo welder at work. He opined that the Petitioner had a large right C6-7 foraminal disk protrusion. He was “unable to opine whether there was a causal relationship between his work with Komatsu and the condition for which [he was] treating.” He explained that the medical records did not suggest a specific accident date, and that the Petitioner had “a specific onset of symptoms in June 2022.” He also noted that Dr. Bells’ records “also do not suggest a specific incident.” Dr. O’Leary was “unable to reasonably state that there is a causal relationship between his cervical disk herniation and his work conditions.” Dr. O’Leary also noted that at the time of this report, that there were no plans for surgery. He noted that if the Petitioner continued with persistent symptoms despite conservative care, they would consider surgical intervention. He explained that at the time of this narrative report, he had only examined the Petitioner once. Dr. O’Leary testified that at the time of his first report, his limited understanding of the Petitioner’s job was that he was a welder, and that based on this knowledge alone he was unable to draw a causal connection between the Petitioner’s neck condition and his employment. (PX 1, 44).

On March 2, 2023, Dr. O’Leary authored a second narrative report at the request of Petitioner’s counsel. (PX 1, Dep. Ex. 3). Dr. O’Leary reported that he was now aware of Petitioner’s job, **“**specifically via job description.” Dr. O’Leary noted that the Petitioner operates a Bug-O robotic welding machine at work. He explained that it was his understanding that the Petitioner “essentially has to tuck his chin to his chest while operating this machine for several minutes at a time.” Dr. O’Leary opined that the Petitioner would not get carpal or cubital tunnel syndrome “from something like this, but he could indeed aggravate or cause a cervical problem with this type of mechanism done

repeatedly." He concluded that he believed "some of the job activities of his job played a role in the development of his C6-7 disk herniation and his neck and right upper extremity symptoms, which have culminated in cervical disk replacement performed by [Dr. O'Leary] on January 23, 2023." (PX 1, Dep. Ex. 3).

The parties took with the evidence deposition of Dr. O'Leary on April 10, 2025. (PX 1). Dr. O'Leary testified that he was a board-certified spine surgeon who performs 300-350 spine surgeries each year. (PX 1, 4). He testified that he saw the Petitioner as a walk-in patient on July 5, 2022. (PX 1, 6-7).

Regarding the initial full duty release from May 2023, Dr. O'Leary testified that he did not have the note somehow. (PX 1, 11). He testified that he had a note from May 18, 2022, when the Petitioner had called the nurse asking for restrictions. (PX 1, 11-12). Dr. O'Leary could not explain why he initially released the Petitioner to return to full duty work in May 2023. (PX 1, 39).

Regarding the Petitioner's job, Dr. O'Leary testified that "I had known previously like he had, what he had done. I think you're talking about the Bug-O, the welder. Like he just had to operate this machine and he said he would have to hold his neck kind of flexed like this, like his chin on his chest for, you know, repetitively throughout the day; that's when he operated that." (PX, 15). He testified that "beyond being a welder he has to operate this welding machine, which I have only had described to me, but basically it causes him to have to hold his neck as I'm describing to you but with, in a flexed position, and he has to do that several times a day." (PX 1, 33). He opined that it was his understanding that the Petitioner's "chin would have been on his chest." (PX 1, 35).

Dr. O'Leary testified that "those types of work activities could cause a herniated disc at C6-7." (PX 1, 27). He testified that "regular flexion and hyperflexion of the neck … could develop a herniated disc." (PX 1, 27). He opined that the condition necessitated the surgeries that he performed on Petitioner.

Dr. O'Leary testified "the problems that he complained to me when he came and saw me in January of 2024 were somewhat different from his original presentation to me, but similar in the sense that it clearly I felt came from his neck and that he reported to me that it was, as it relates going back to work working and job duties that were causing that, so I believe it's related to his work, yes." (PX1, 28-29).

Regarding the right arm, Dr. O'Leary testified that "he has the arm shaking and some of that stuff is a little bit of an unusual symptom that's not very common in the sense that it's, I see people with tremors and things like that who have cervical radiculopathy. They are a smaller subset of patients. I don't think, though, that's an unusual manifestation or he's somehow like, you know, I wouldn't say – Wadell's just means inorganic pain behaviors. I mean, he's got some unusual symptoms, but not, nothing where I thought he was exaggerating or anything like that." (PX 1, 31).

Regarding work restrictions, Dr. O'Leary testified that "The interactions that occurred between me and petitioner that are documented visits where he came to the office. If I said call me when you're ready to go back, my nurse will release you, that's what happened. I don't interact in that." (PX 1, 40). He testified that "I leave it up to the patient; If he wants to work, I let him work." (PX 1, 41). He testified "I have no knowledge of whether he worked or not or didn't, and if he was gaming my office by calling in and saying I want to go back and then I want to go back to work restricted I have no way to tell you that…". (PX 1, 42).

Testimony of Dr. Daniel Troy

On June 12, 2023, Dr. Troy conducted a Section 12 examination at the Request of the Respondent. (PX 2). The Petitioner referenced an accident date of June 21, 2022, where his symptoms increased in severity that he was unable to return to work thereafter. He reported pain due to repetitive movement due to his job requiring him to be looking downwards with his chin tucked to his chest as he operates a Bug-O robotic welder. Dr. Troy documented that the Petitioner underwent cervical disc replacement at C6-7 with Dr. O'Leary on 1/23/23. The Petitioner reported that he returned to full duty work on 5/8/23. He reported that the first 3 days consisted of safety training. The following 2 days consisted of refresher training. The Petitioner reported that he went back to work after the weekend of 5/15/23 and he had to do a significant amount of grinding on that day using a 7-inch grinder. The Petitioner reported that he started developing trembling in his right upper extremity and was unable to return to full duty work thereafter. Dr. Troy included a chronology of the records he reviewed in conjunction with the IME, which did not include a job description. Dr. Troy opined that notwithstanding any type of outside injuries, that the Petitioner's MIG welding requirements and his use of a Bug-O welder that the Petitioner reported weighed between 25 and 30 pounds on a repetitive basis "lead to the herniation that he underwent surgical treatment for. Dr. Troy opined that the Petitioner could return to full duty work at that time. Dr. Troy also documented that the Petitioner fully admitted that he had a successful resolution of his right upper extremity radicular symptomatology. He opined that "I do not know of any scientific reasons to explain why [Petitioner] would be having tremoring to his right upper extremity." He opined that the Petitioner had reached maximum medical improvement. (PX 2).

On July 25, 2023, Dr. Troy authored an addendum report. (PX 2). Dr. Troy reported that he reviewed the job description short rail weld out and it was approximately 4 pages in length, along with a few pages of pictures showing claimant's job duties." Dr. Troy opined that he reviewed the Petitioner's "job description with pictures and yes, it is causally related to the industrial accident." (PX 2).

On March 11, 2024, Dr. Troy conducted a repeat Section 12 of the Petitioner following the updated surgery recommendations of Dr. O'Leary. Dr. O'Leary never drafted an IME report. (PX 2).

The parties took the evidence deposition of Dr. Troy on November 27, 2024. Dr. Troy testified that he did not know who scheduled the IME. (PX 2, 7). Dr. Troy testified that at the time he authored his first IME report, he offered a causal connection opinion based on what the Petitioner had described to him and not the written job description. (PX 2, 40). He testified that this opinion was based solely on the Petitioner's representation regarding hyperflexion of his cervical spine when engaged in certain work activities and the alleged repetitive movement of the Bug-O welder weighing between 25 and 30 pounds. (PX 2, 41). Dr. Troy had no recollection of the job outside of this. (PX 2, 42). He testified if that was not accurate, that his opinions would be different. (PX 2, 42).

Dr. Troy testified that he has a rule that if he does not generate an IME report on the date of its occurrence, then he cannot complete a report. (PX 2, 23). Regarding the March 11, 2024, IME, he testified that "we had two personal deaths that occurred on the same date, and by the time it was brought back to my attention, it was too late for me to perform because that's my rule." (PX 2, 23). In his notes from the IME, he documented that the Petitioner "was mainly complaining of left upper extremity pain. He did complain of posterior cervical neck pain. He denied pain to his mid or low back." (PX 2, 25). He testified that he did not formulate any opinions on this date." (PX 2, 25). He testified that his failure to author a report was personal in nature. (PX 2, 27).

Dr. Troy testified that "The original causality was based on the size of the herniation on the MRI. It appeared to be above and beyond the natural progression of degeneration that we are all going to get. (PX 2, 31).

In regard to the right arm, Dr. Troy testified "…I cannot fully explain or correlate why he would be having tremoring from a herniated disc or a nerve root irritation in the neck. That does not make a lot of sense to me. Maybe that's the way he expresses his pain, when he has pain, he tremors, but that would be atypical." (PX 2, 32).

Testimony of Dr. Avi Bernstein

On September 19, 2024, the Petitioner underwent a Section 12 examination with Dr. Avi Bernstein by agreement of the parties, after Dr. Troy failed to author an IME report. (RX 11). The petitioner reported that he had neck pain that radiated into the trapezial muscles bilaterally. Dr. Bernstein noted that the petitioner was a "healthy, fit-appearing man" in no acute distress. He had "excellent" strength in the upper extremities. There was some atrophy noted in the right upper extremity. He had a negative Hoffman sign and a negative Spurling's maneuver. Dr. Bernstein reviewed the MRI films from 1/23/2024. He noted signal abnormality at the C6-7 level consistent with a total disc arthroplasty. He opined that Petitioner had degenerative disc changes at C4-5 and C5-6 with greater disk space collapse at C5-6. Petitioner had disc bulging due to these degenerative changes resulting in some spinal stenosis. Dr. Bernstein noted no evidence of disc herniation or nerve root compression. (RX 9).

Dr. Berstein's report also reflects on some of the records he reviewed in conjunction with the IME to which he felt were pertinent, which included the job description provided for the "Short Rail Weld Out." Dr. Bernstein noted that he reviewed the job description and multiple images of the types of welding activities alleged performed by Petitioner. The Arbitrator notes that the job description was prepared by Respondent, but still more descriptive and illustrative than the one provided to Dr. O'Leary. He also noted records reflecting a low back injury in 2018, referencing heavy weightlifting and squatting up to 300 pounds. He referenced the chiropractic treatment records from 2020 through 2022, which documented neck pain and treatment of the cervical spine. Dr. Bernstein referenced the MRI report from 7/18/2022 which described a right sided disc herniation at C6-7 impinging on the hemicord and right C7 nerve root, and some discogenic findings at other levels including C4-5 and C5-6. He also noted a progress report from Dr. Bell from 9/29/2022 where Petitioner had reported a 1-1/2-month history of right-sided neck pain, symptoms which reportedly came on suddenly. (RX 9).

Dr. Bernstein opined that the Petitioner "suffered a cervical disk herniation at the C6-7 level as a result of degenerative change." He opined that the condition was not related to any specific incident or event. Dr. Bernstein opined that he could not "attribute [the Petitioner's] cervical pathology, disk herniation, or his current symptoms to his work activity." Dr. Bernstein opined that the medical treatment rendered to date had been medically "reasonable and necessary and appropriate" but not causally related to a work injury. He opined that the Petitioner had "recurrent severe neck pain, which may be on the basis of adjacent segment discogenic changes." He opined that it was reasonable for him to proceed with a two-level anterior cervical fusion to relieve his current symptoms." (RX 9).

Dr. Bernstein indicated that he "would be happy to look at [the Petitioner's] prior MRI scan images and view it in comparison to the current MRI scan if it is obtained and forwarded to [him]." He noted that "It would also probably be valuable to evaluate [the Petitioner's] cervical disk arthroplasty with a CT scan to confirm that it is anatomically stable and correct and not responsible for [the Petitioner's] current symptoms." Dr. Bernstein concluded that based on his evaluation of the Petitioner, that he did not feel the Petitioner could work in his usual work activity. (RX 9).

The parties took with the evidence deposition of Dr. Bernstein on April 28, 2025. (PX 1). Dr. Bernstein testified consistently with his IME report. Dr. Bernstein testified that he "found no evidence that [the neck injury] was causally connected to his employment." RX 9, 11). He testified that "I didn't think there was anything unusual about his employment that puts unusual stress on the neck. I don't consider it a heavy physical job with overhead lifting, which is a common stressor for the cervical spine. There are jobs that are heavy construction and things like that where the physical loads are much higher than the normal physical activities of daily living so that those could be contributing factors to an injury. So, there was nothing specific about this case that I felt was reasonably associated with the disc herniation that he suffered. And for sure a disc degeneration that he had had nothing to do with his prior disc replacement and was just an accumulation of stress over time, a lifetime of stress."

Regarding the second occurrence, Dr. Bernstein testified that "You can even make an argument that the 2 levels of degeneration that he had in his neck, in and of themselves, or a stressor to the C6-7 level. Because of the disk space collapse and the lack of motion from C5 to C7, it puts excessive stress on the level above or below. So, it's not uncommon to see people who have disc degeneration in one or more segments and then have a herniated disc below the segment or above the segment. It's as if they blew out the mobile segment above or below the segment." (RX 9, 12-13).

Current Status

The Petitioner has not returned to work in any capacity for the respondent since he completed his shift on January 19, 2024. He alleges that the permanent work restrictions that were provided by Dr. O'Leary prevent him from returning to his employment as a welder for the Respondent. The Petitioner claims entitlement to all related medical benefits and TTD benefits at this time.

CONCLUSIONS OF LAW

The Arbitrator finds that the Petitioner failed to prove that his condition of ill-being is causally connected to the alleged repetitive nature of his employment. As a result of this finding, the Arbitrator denies the Petitioner's claims to all corresponding workers' compensation benefits.

(C) IN SUPPORT OF THE ARBITRATOR'S DECISION ON WHETHER AN ACCIDENT OCCURRED WHICH AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that Petitioner did not sustain an accident on June 21, 2022 or January 19, 2024 which arose out of and in the course of his employment with Respondent, as Petitioner did not meet his burden of proof in regard to the issue of causal connection. (See Section F).

(F) IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO HIS EMPLOYMENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that Petitioner did not meet his burden of proof that his current condition of ill-being is related to his work activities.

Petitioner bears the burden of proving medical causation by a preponderance of the evidence. Hutson v. Industrial Commission, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" Shell Petroleum Corp. v. Industrial Commission, 10 N.E. 2d 352 (1937) Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. Spankroy v. Alesky, 45 Ill. App.3d 432 (1st Dis. 1977). If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred because of an accident which arose out of and in the course of his employment. Nunn v. Industrial Commission, 157 Ill.App.3d (4th Dist. 1987).

In the instant case, the Petitioner alleges that he sustained a cervical disc herniation at C6-7 because of his employment as a welder for the Respondent, which led to a total of two surgeries, alleged right arm tremors, and alleged permanent work restrictions. He relies upon the medical opinions of Dr. O'Leary and Troy who opined that the Petitioner's current condition of ill-being in his cervical spine are related to the Petitioner's allegation that his chin is constantly and repetitively tucked to his chest while he operates a Bug-O welder robot.

The Petitioner's claims are weak under any scrutiny. Petitioner was not much in June of 2022. In fact, from 2018 to 2022, the Petitioner had established an irregular working pattern as he missed long period of time from work on multiple occasions. For instance, in 2021, Petitioner missed 42 weeks of work. (RX 5) and did not work from June 6th to June 21st of 2022 (RX 1) yet was very active, referencing 5 or more days of exercise per week including weightlifting. (PX 6 p.20) Furthermore, the Petitioner has a history with motorcycles and was involved in a daylong riding event two days before the manifestation event. (RX 16 p.39, 52) As a result of this activity, the Petitioner suffered from general aches and pains which are documented in his chiropractic records leading all the way up to his first alleged manifestation date of June 21, 2022. Those do not mention his employment as a causative factor. In the treatment dates leading up to the 6/21/22 date, there is nothing that would distinguish his treatment that predated the 6/21/22, from the treatment he received on and immediately following the 6/21/22 date. The Petitioner routinely reported pain all over his body.

When the Petitioner first completed an Application for Sick Leave on 6/22/22, he did not report neck or right arm issues. He reported that he had a back injury, and that it was not related to work. He reported that he was not sure how it happened. There is no reference to work demands. When the Petitioner first presented for medical treatment at UnityPoint Clinic, he reported back pain in addition to other ailments.

On his second Application for an Extension of Leave on 6/28/22, he was taken off work for thoracic pain, right shoulder pain and right elbow pain. His work status did not come from his original physician. He obtained his off-work status from his chiropractor, after Dr. Avila refused to extend his restrictions for him. (PX 6 p.12)

The Petitioner presented to Dr. O'Leary, his third-choice physicians, on July 5, 2022, which the date on which his restrictions from Dr. Kurtz expired. Dr. O'Leary is a spine surgeon who recommended an MRI of the cervical spine. Dr. O'Leary's office was willing to write off work slips at Petitioner's request for extended periods of time. He even wrote the Petitioner off work without seeing him in person on 9/27/22 when the Petitioner returned from his honeymoon.

The first documented report from Petitioner that his medical condition might be work-related on October 27, 2022, when he told Dr. O'Leary that his "neck flexed all night long." Dr. O'Leary had made no such earlier reference. Coincidentally, this examination took place 5 days after Dr. O'Leary was asked to author a narrative report. It is safe to conclude that Dr. O'Leary's initial notification that the condition might be work-related was from the Petitioner's workers' compensation attorney and not the patient. (PX 1 X3) From that point forward, the Petitioner's complaints are more consistent, and he related it all to his employment.

The Petitioner has been in control work status for the entirety of this case. The records reflect that the Petitioner was quite capable of obtaining restrictions that would keep him out of work. The medical records are littered with requests by Petitioner asking for his restrictions to be addressed or updated, with and without physical examinations. From the start, the Petitioner did not want physical therapy, documented by Dr. Avila. He underwent only had 7 sessions of physical therapy before he underwent his first surgery. While he had two injections, he said that he had an allergic reaction, but no such reaction is documented anywhere in the medical record.

The Petitioner pressured Dr. O'Leary into a full duty release effective 5/1/23 to reset his group disability benefits then have his restrictions changed again on 5/18/23 with office visits or a clinical exam. The evidence that we do have regarding the change of restrictions, is a phone call to Dr. O'Leary's office, and a nurse note. The Petitioner conveniently testified that he did not remember going back to work, but that his wife told him that he did that so that he could reset his benefits and then proceeded to offer details of how his benefits work. This simply is not credible. The work restriction manipulation does not end there. The Petitioner returned to full duty work for the Respondent on August 11, 2023. Once again, Dr. O'Leary had no evidence of this full duty release either. Despite the full duty release, the Petitioner was back to Dr. O'Leary's office on 8/24/23 complaining of right upper extremity pain and inquiring into whether his work was aggravating it. This is what prompted the first EMG/NCV on 9/13/23, which showed improvement with the cervical radiculopathy. Without objective to point to, the Petitioner appears to have held off with medical treatment until 1/4/24.

When the Petitioner presented to Dr. O'Leary on 1/4/24, an updated cervical spine MRI was prescribed, but Dr. O'Leary did not take the Petitioner off work. Not to be denied, the Petitioner went to the emergency room on 1/20/24 after awaking during the night with right arm cramping. It was the Petitioner who reported that his right arm was related to his neck, that he was awaiting an MRI of his cervical spine and a follow up with his doctor.

Petitioner secured work restrictions, turn them in and reapplied for Sick Leave. This time he stated that his neck condition was related to MIG welding at work and has not returned to work.

Dr. O'Leary recommended a second surgery on 1/30/24 and took the Petitioner off work again, but it was not scheduled until 12/2/24.

The Petitioner testified that he could have his restrictions changed with a phone call, and Dr. O'Leary testified that he would offer what his patients asked of him. When asked on cross-examination if Dr. O'Leary would lift his permanent work restrictions if he asked him, the Petitioner testified "maybe."

The underlying theory of the Petitioner's repetitive trauma claims are weak. While it may be true that Drs. O'Leary and Troy causally connected the Petitioner's cervical spine condition to his employment, it was based on the incorrect assumption that Petitioner's chin was constantly tucked to his chest while he operated the Bug-O welding machine. In truth, Petitioner's job had gotten physically easier since the introduction of the robot welder in 2016, petitioner had missed a lot of work in 2021 and had not work for Respondent since June 6th, which was three weeks for the manifestation date. On direct, Petitioner's testimony focused only on MIG welding, a task that he performs for approximately 20% of a work shift, stating further that he only "sometimes touched his chin to his chest while MIG welding." (T. p.17) In contrast, Dr. O'Leary often seemed to be under the impression that Petitioner's neck was bent and flex "all night long" while operating the robotic Bug-O welding machine. (PX 1 p.36, 45) Ironically, Petitioner's claim would have been stronger if he filed it before introduction of the Bug-O Welding machine in 2015 or 2016. After which, Petitioner's job has gotten easier. Dr. O'Leary did not see any video of the Bug-O robot in operation, nor did he see any of the previous medical records showing no connection of neck pain complaints to work activity, nor did he know of the motorcycle fundraiser or Petitioner's extensive lost time from work in 2021. As a result, Drs. O'Leary and Troy's medical opinions regarding causality in favor of Petitioner were not compelling to the trier of fact and are not based in the Petitioner's sworn testimony about his work activities. If they were privy to the entire record, as stated above, it's unlikely that they would still find causal connection again. And looking at the record as whole, Dr. Avi Bernstein's opinion of no causation seems to make the most sense.

Dr. Bernstein is a well-respected spine surgeon in Illinois. His medical opinions regarding this matter are credible. Dr. Bernstein had better job description than Dr. O'Leary. Dr. Bernstein's opinions are very simple. He reviewed the job and opined that the Petitioner's cervical spine condition is not causally connected to the employment. The basis for this opinion is that there was nothing in the employment that puts unusual stress on the neck. This makes much more sense than Dr. O'Leary's second effort, where he determined that the Petitioner's neck is routinely tucked to his chest "all night long." Dr. Bernstein did not dispute that there was a herniated disk at C6-7, he did not dispute the level of degeneration at the other levels, and he did not disagree with the surgery recommendations. He simply did not believe this cervical issue was from the employment. To his credit, Dr. Bernstein provided some additional enlightening opinions

on the Petitioner's condition and the recommendation for a second surgery by stating that the level of degeneration at the levels above and below C6-7 could very well have caused the herniation by itself. Dr. O'Leary simply moved to surgery and related everything to the Petitioner allegedly looking down at work despite having a poor understanding of the quantity and quality of the work activity. Dr. Bernstein's opinions and testimony is quite credible for this case.

It must be mentioned that there were two in-person Section 12 examinations that were conducted by Dr. Daniel Troy, and one addendum report. Unfortunately, after completing the second IME on March 11, 2024, Dr. Troy simply did not write a report. This stubbornness in and of itself ought to be taken into consideration when weighing the credibility of this expert. Dr. Troy testified that when he first offered a causal connection opinion in favor of the Petitioner, that this was based solely on what the Petitioner told him concerning his employment. He testified that if it was different, then his opinions would be different. When he allegedly reviewed the job description and authored his addendum report on 7/25/23, he simply stated that he reviewed the Petitioner's "job description with pictures and yes, it is causally related to the industrial accident." He testified that he had no recollection of the job description and that he did not have it in his file. His opinions are conclusory and not very persuasive. They are given little weight here.

That said, one area of Dr. Troy's testimony that can be helpful to the Petitioner generally speaking, were his opinions on the right arm tremors, as Dr. O'Leary and Dr. Bernstein had little to offer on this issue. Dr. Troy explained that the right upper extremity would not be related to the cervical spine because tremoring is a central process and not related to anything on the spine cord. It is an issue of wonder to the doctors and the trier of fact. The Arbitrator was given a demonstration of the tremors at trial and not entirely convinced of their authenticity.

Overall, these claims appears to be somewhat manufactured. If they were diamonds, they would have proved to be created in a lab instead of nature. The Petitioner initially went out of work for what he reported was a non-work related back issue. Once there was an MRI that objectively identified a herniated disc at C6-7, at some point thereafter, the injury was crafted to seem work-related. Petitioner's sick time in 2021 was extensive and never really explained. Petitioner's off work slips were massaged. The second application for adjustment of claim could be construed as a "clean up" of the deficiencies related to the original claim. Finally, the testimony about the Petitioner's deceased daughter was not relevant to the claim and appeared to be a blatant attempt to elicit sympathy from the court.

For the aforesaid reasons, the Arbitrator finds that the Petitioner failed to satisfy his burden of proof that his cervical spine issue is causally connected to his employment for Respondent. The Petitioner's claim for workers' compensation benefits is denied.

(J) IN SUPPORT OF THE ARBITRATOR'S DECISION AS TO WHETHER THE MEDICAL SERVICES PROVIDED TO THE PETITIONER WERE REASONABLE AND NECESSARY, AND WHETHER RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator found that the Petitioner did not satisfy his burden of proof with respect to the issues of accident and causal connection (see Sections C and F). As such, the Petitioner's claim to medical benefits is denied.

Furthermore, the Petitioner's medical treatment with Dr. O'Leary falls outside the 2-Doctor Rule. Section 8(a) of the Act requires an employer to pay for all "necessary first aid and medical services" but limits the employee's right of selection of physicians. The employer will be liable for the medical provider initially chosen by the employee, as well as any second medical provider chosen by the employee as well as their chain of referral. Outside of this 2-Doctor Rule, the employee at any time may obtain any medical treatment she desires at his own expense. 820 ILCS 308/8(a).

The Petitioner's first choice of medical provider was Kurtz Chiropractic. His second choice of physician was Dr. Avila at UnityPoint Clinic First Care. His third choice of physician was Dr. O'Leary. There is no chain of referral. The Petitioner went to each medical provider on his own. He testified to this effect. The treatment administered by Dr. O'Leary falls outside of the 2-Doctor Rule. Petitioner failed to prove that Dr. O'Leary was within the chain of referrals allowed under the Act.

(L) IN SUPPORT OF THE ARBITRATOR'S DECISION AS TO WHETHER THE PETITIONER IS ENTITLED TO TEMPPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS THE FOLLOWING:

The Arbitrator found that the Petitioner did not satisfy his burden of proof with respect to the issues of accident and causal connection (see Sections C and F). As such, the Petitioner's claim to temporary total disability benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025158
Case Name	Roger Pfortmiller v. Grane Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0307
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Jonathan E. Barrish, Dana Djokic

DATE FILED: 10/29/2026

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROGER PFORTMILLER,

Petitioner,

vs. NO: **21WC025158**

GRANE TRANSPORTATION,

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 accident, notice, causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, modifies the Decision of the Arbitrator, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On page three of the Decision, in the final sentence of the first paragraph, the phrase "2019, 2020, and 2021sician's Immediate Care (PIC)" is corrected to say "2019, 2020, and 2021".

On page three of the Decision, in the second paragraph on that page, a typographic error is corrected, where the Arbitrator states "He didn't complete an accident report for Respondent until 8/9/21" it is corrected to state "He didn't complete an accident report for Respondent until 9/9/21".

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 Arbitrator's Decision filed on May 1, 2026, is corrected and modified as stated herein, and is otherwise affirmed and adopted.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

OCTOBER 29 2026

O: 10/20/26
AHS/ps
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025158
Case Name	Roger Pfortmiller v. Grane Transportation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Jonathan E. Barrish, Dana Djokic

DATE FILED: 5/1/2026

/s/ Paul Cellini, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 28 2026 3.59%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

ROGER PFORTMILLER Case # **21** WC **25158**
Employee/Petitioner
v.
GRANE 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 **Paul Cellini**, Arbitrator of the Commission, in the cities of **Wheaton** on **October 9, 2024** and **Joliet** on **February 4, 2026**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

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

In the year preceding the injury, Petitioner earned $**46,800.00**; the average weekly wage was $**900.00**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent child.

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

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

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

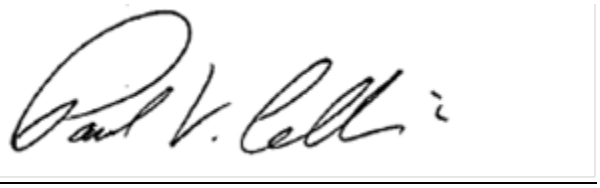
ORDER

The Petitioner has failed to prove by the preponderance of the evidence that he sustained accidental injury arising out of and in the course of his employment with Respondent on July 21, 2021.

No benefits are awarded.

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

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



Signature of Arbitrator

MAY 1 2026

STATEMENT OF FACTS

Petitioner worked for Respondent as a semi-trailer spotter since June 2017, moving semi-trailers in and out of loading docks and opening and closing the trailer doors. The spotter truck he drove was essentially a small cab semi tractor. He testified he would move seven or more trailers per hour, working 10 hour days, 50+ hours per week. He would hook and unhook trailers, move them in and out of the loading docks, and would move trailer stands in and out from underneath the trailers. He testified these stands were approximately 4' x 2' x 4' and

weighed 75 to 100 pounds with a wheel in the middle. They would be used with every trailer he moved. He received his assignments via his computer. Petitioner took and passed yearly DOT physicals at Physician's Immediate Care (PIC) in 2019, 2020, and 2021sician's Immediate Care (PIC) and was recertified. (See Px3).

Petitioner testified he developed low back pain due to bouncing and vibration while using the spotter truck during his 10 hour shift on 7/21/21 in DeKalb a 3M facility. He testified that prior to this, in May 2021, he started getting a tingling down his right leg to his toes. He mainly felt this when driving and bouncing in the truck seat but also to a lesser extent when lifting and moving the trailer stands. He called off work on 7/22/21, reporting the injury to his supervisor, Rich Carney, testifying Carney provided him with a phone number to call. He didn't complete an accident report for Respondent until 8/9/21, about five and a half weeks later, testifying this was because he was told by the man in charge of workman's compensation that he had to go to Chicago to get the form. He couldn't recall the exact date, but he went to Chicago. While he was asked to complete the injury report there in Chicago, Petitioner indicated he first wanted his attorney to review it. Petitioner identified the Employee Written Statement of Injury (Rx1) he completed and signed on 9/9/21 after his attorney reviewed it. He then emailed it back to the workman's comp person; he believed a couple of days after he went to Chicago. In the Statement, Petitioner alleged a 7/21/21 injury due to "repetitive lifting (climbing, pulling), repetitive trauma." He indicated he reported this to Carney on 7/22/21. Where asked for more detail on the size and weight of what was lifted, Petitioner just indicated trailer doors and trailer stands. (Rx1).

In the records obtained subsequent to the hearing bifurcation, on 7/15/21, six days *before* the alleged accident date, Petitioner went to the Valley View ER reporting a five week history of right low back pain radiating down the lateral right leg to the foot ("Patient has had previous pain in the past with sciatica. Patient states the pain has been more intense over the past 2 days. Patient does have a job in which he undergoes heavy labor on a daily basis.". The triage note states the pain had been there for a month, nontraumatic, and that he had been seen recently for sciatica, the last time on 6/7/21. He denied any fall or trauma. Exam of the lower back revealed minimal tenderness to palpation and with range of motion and positive right straight leg raising test. The impression was right side sciatica, and Petitioner was prescribed Norco and light duty restrictions (no pushing, pulling or lifting greater than 20 pounds) for the following three days. These records also show Petitioner had been prescribed Norco and Prednisone on 6/7/21. (Rx10). There is no record of a 6/7/21 visit in the evidentiary record.

Petitioner went to the Morris Hospital ER on 7/22/21 with back and right leg pain since May with no specific injury. It was indicated that he had gone to the ER on 7/19/21 and received Norflex, which wasn't helping. Lumbar radiculopathy was diagnosed. Petitioner was improved with medication and discharged to follow up with his primary provider and an orthopedic physician. He was allowed to return to work as of 7/26/21. (Rx2). The Arbitrator found no evidence of a 7/19/21 visit in the evidentiary record.

Petitioner was then taken to the ER via ambulance around 1:30 PM on that same date, 7/22/21. He informed the paramedics he had been to Morris Hospital early that morning due to severe back and right leg pain and was given morphine and Valium and a right hip x-ray. The Northwestern Valley West Hospital records indicate Petitioner arrived via ambulance with back pain and right leg pain "since mid-May worse this past week." He reported multiple ER visits since early May and was getting worse. It was noted he was seen at "outside OD" at Morris Hospital earlier and had received an IV medication there and but the pain returned and got worse. Right hip x-ray showed no acute findings and bilateral cam deformities that could cause femoral impingement. Petitioner was unable to lie still for an MRI despite the IV pain medication. Differential diagnosis was sciatica vs femoral impingement, and the doctor noted an MRI was needed.

Petitioner returned to the Morris Hospital ER on 7/26/21 with complaints of low back and right leg pain since about May 2020 ("It has been getting worse ever since May") with no specific injury or trauma causing the

onset. He reported three episodes of being "unable to control urine" but denied actual incontinence. He had begun to use a cane over the past couple of days. X-ray showed L5 over S1 spondylolisthesis, worse with flexion/extension. MRI was ordered to evaluate the nerves, and medication was prescribed. Injections and possible surgery were noted as possible treatment options. He was advised to see his primary provider regarding complaints of bilateral leg swelling. He was held off work pending follow up. (Px7; Rx3).

Petitioner testified the indication of onset in May 2020 was not accurate, as his pain didn't start until May 2021. He also testified that this date was the first time he used the cane. His July 2021 pain was the same as his May 2021 pain.

The 8/4/21 lumbar MRI showed grade 1 spondylolisthesis at L5/S1, most likely due to bilateral spondylosis at L5, with moderate generalized disc bulging. The combination caused severe bilateral foraminal stenosis with L5 nerve root impingement, right greater than left. There was some minimal posterior disc bulging and mild left facet arthrosis at L4/5 with no stenosis. The remaining levels were unremarkable. (Px1; Rx4).

Petitioner returned to the Morris ER on 8/9/21. After reviewing the MRI, Physician's Assistant (PA) Jakubonis, under the supervision of orthopedic surgeon Dr. Ali (Rezin Orthopedics at Morris), diagnosed severe foraminal stenosis, mild central canal stenosis, and recommended a therapeutic and diagnostic epidural before considering surgery, though he questioned the level of relief that would be likely given the severity of the foraminal impingement. Petitioner didn't have insurance and hadn't yet called the Morris Hospital assistance program. He was advised to return to the ER if he worsened. (Px7).

Petitioner testified he then reported to Physicians Immediate Care (PIC). He was evaluated at PIC on 9/22/21 with complaints of low back pain since 7/21/21. The triage note states: Patient made no changes to prior PFSH hurt back at work – repetitive lifting and pulling – 7/21 last day worked – first time company sent him here." The history stated in the report was of Petitioner reporting: "it was not the result of an injury, which had a sudden onset. (He) had no similar problems in the past. (He) reports that the pain radiates to the right buttock. (He) reports that the onset was not associated with blunt force trauma, not associated with exertion; ASSOCIATED WITH LIFTING." He reported performing lifting, pulling, and climbing up and down and ladders at work. When it initially happened, he went to three different ERs due to pain, and MRI showed an L5/S1 injury. The pain went into the right leg as well. Rezin Orthopedics told him he could get an epidural or would need surgery, and he was taken off work. He also reported numbness and tingling and difficulty sleeping. Petitioner reported a gradual onset about 2 months prior of pain and numbness, which was constant and radiating to the foot. He was hunched over and using a cane. Exam noted positive right straight leg raise testing. Lumbar radiculopathy was diagnosed, and Petitioner was referred to orthopedic surgery. It's unclear if Petitioner was held off work pending orthopedic evaluation or was released to work with any restrictions being designated by orthopedics. The evidence reflects that this is a company clinic as medical personnel contacted Respondent directly and the adjuster advised Petitioner was already treating at Rezin. There also is a 9/8/21 form that appears to be from Respondent requesting "consult to determine compensability (Evaluation of cause of injury)." (Px3; Rx5).

The records in evidence indicate he then had no further treatment until he went to see orthopedic surgeon Dr. Koutsky on 4/4/22 at his attorney's recommendation. The 4/4/22 report noted complaints of low back pain into the legs with numbness and tingling, right greater than left: "His symptoms began after a work related injury that occurred on 7/21/21. He was working as a spotter for (Respondent). He states that the repetitive vibration and jarring in the truck started his [symptoms]." He advised his supervisor and was sent to PIC. Neurologic exam was normal except for loss of sensation at the dorsal right foot and positive right straight leg raise. After reviewing the MRI, the diagnosis was L5/S1 spondylolisthesis, spondylolysis, stenosis, and radiculopathy. Therapy and possible injections were recommended, and Dr. Koutsky noted that Petitioner could ultimately be a

fusion candidate. Medications, including patches and anti-inflammatory cream, were prescribed along with infrared heating pad. Petitioner was held off work until further notice and physical therapy and pain management evaluation were prescribed. (Px1).

On 4/13/22, Petitioner saw Dr. Vargas at River North Interventional Pain Management Consultants. Petitioner indicated he was asymptomatic until 6/21/21, when Petitioner sustained a work related injury due to "repetitive vibration and jerking while driving a truck." He was sent to an urgent care facility, referred to therapy and given work restrictions. Soon after that he was referred to orthopedics, but he didn't improve with therapy or medication. Petitioner reported worsening since that time in frequency and intensity. Petitioner reported sharp, stabbing, shooting electrical-like pain from the low back into both lower extremities to the feet, right greater than left. The diagnoses were: 1) chronic low back pain syndrome, 2) lumbosacral discogenic pain syndrome and radiculopathy, and 3) lumbosacral axial and facet pain syndromes. Dr. Vargas recommended physical therapy, NSAIDs, muscle relaxers, and a series of bilateral L5/S1 epidurals. Other possible future options included facet injections, nerve blocks, and radiofrequency ablation. Petitioner was held off work through 5/25/22 ("After injections"). (Px10).

On 5/2/22, Dr. Koutsky noted no change in Petitioner's condition and that he was still awaiting an injection and ordered ongoing therapy and off work. In addition to ongoing medications, a TENS unit was ordered. On 6/6/22, Dr. Koutsky released Petitioner to a sedentary/seated job, and this was continued on 7/11/22. Therapy was recommending continued treatment and a lumbar injection still hadn't been authorized. Petitioner continued to see Dr. Koutsky through December. On 11/7/22, Dr. Koutsky notes the therapist advised home exercise pending injection. (Px1).

On 11/14/22, Dr. Koutsky had Petitioner drug tested. Everything came up negative, which was the expectation. (Px5). Billing from this facility (Premier Healthcare Services) reflects charges for toxicology testing on 4/7/22 and 11/14/22, at a cost of $3,850 each. (Px6).

Orthopedic surgeon Dr. Phillips examined the Petitioner on behalf of the Respondent on 12/6/22. Petitioner denied a specific injury: "He describes pushing and pulling over 100 pounds repetitively during that day [7/21/21 or 7/22/21] and developed severe back pain as well as radiating leg pain as a consequence of this. He describes this as having persisted since that time." He complained of back pain and what appeared to be bilateral L5 radicular symptoms. He had basically constant 8 out of 10 level back pain and leg pain and weakness, worse with any activity. Petitioner hadn't worked since July 2021. Dr. Phillips found limited back motion but otherwise normal neurologic findings on exam. His review of the MRI indicated Grade 1 to 2 spondylolisthesis at L5/S1 with some loss of disc height, and an apparent disc prolapse. It showed significant foraminal stenosis with likely L5 nerve root compression. The doctor noted the axial and proximal views showed patent L5/S1 foramina and central canal. Dr. Phillips opined the Petitioner had preexisting L5/S1 spondylolisthesis He noted Petitioner's July 2021 records showed no specific injury and that the pain began in May and then was worse in July for a few days prior to the visit. The first reference in the medical records of a specific work injury was to Dr. Koutsky on 4/4/22. Noting Petitioner had a preexisting condition with no clearly documented 7/22/21 injury, had symptoms that clearly predated July 2021, and that Petitioner himself wasn't attributing his injury per the records to what he told Phillips, the doctor opined Petitioner's lumbar condition was unrelated to a work injury. He noted back pain and L5 radiculopathy were consistent with the MRI findings and that epidural was a reasonable next step, but the treatment wouldn't be related to any July 2021 injury given the history he provided in the medical records. Petitioner needed no chiropractic treatment and no current work restrictions would be related. Dr. Phillips references both 7/21/21 and 7/22/21 as possible accident dates. (Rx8).

Petitioner continued to treat with Dr. Koutsky monthly or bi-monthly through 2/19/24 with no real improvement indicated. Dr. Koutsky continued to prescribe ongoing medications, which were significantly expensive per the

records, and restricting Petitioner to sedentary/seated duty. He continued to recommend injection. He did not review the evaluation report of Dr. Phillips until 3/6/23. Dr. Koutsky stated he disagreed that Petitioner's condition was unrelated to a 7/21/21 injury due to preexisting symptoms and MRI changes, stating: "Although the patient does have preexisting changes on his MRI, and may have experienced symptoms, there is no question that his work related injury aggravated his pre-existing condition. It is this aggravation which requires formal medical treatment", including therapy and injection, noting Dr. Phillips agreed with the recommended treatment. On 7/24/23, Dr. Koutsky prescribed a "Painshield MD kit." On 12/11/23, he ordered a Functional Capacity Evaluation (FCE). (Px1).

On 2/1/24, Petitioner underwent a Functional Capacity Evaluation (FCE) at ATI Physical Therapy at the request of Dr. Koutsky. Testing was indicated to be valid. Reviewing Petitioner's job as a spotter was at the light occupational physical demand level according to the Dictionary of Occupational Titles (DOT), while Petitioner tested at the medium demand level (20 to 50 pounds occasionally). While his capabilities met the DOT definition, his capabilities fell below the self-stated level for lifting trailer stands. Noting Petitioner had issues with kneeling and walking, he had reports and/or associated behaviors regarding low back and right leg pain and tingling. He was not capable or more than a 7 or 8 hour workday. The possibility Petitioner could improve on this with work conditioning was noted. (Px11). On 2/19/24, Dr. Koutsky noted the FCE had been performed and released Petitioner per the FCE restrictions. (Px1).

Dr. Phillps on 9/1/25 reviewed the medical records which predated July 2021 and issued an addendum report, opining these records further supported his opinions as Petitioner had low back symptoms prior to July 2021 – Dr. Davenport noting on 7/22/21 Petitioner had low back pain into the right leg and foot since early May that required multiple ER visits with no mention of work injury. The 7/16/21 report of Dr. Fedinec noted Petitioner had a 5 week history of low back pain into the foot, and a prior history of sciatica noted when he was last seen on 6/7/21 with no mention of work-related symptoms. He reiterated his prior opinions including that Petitioner's condition was not causally related to a work accident. (Rx9).

Orthopedic surgeon Dr. Koutsky testified via deposition on 10/23/23. Petitioner presented on 4/4/22 with a chief complaint of low back pain radiating down both legs, right greater than left, with numbness and tingling. His symptoms began after a 7/21/21 work injury he stated was due to excessive vibration from being in the truck as a spotter, jarring his low back and contributing to his symptoms. He'd had no formal treatment to date, just MRI. Exam indicated good strength, numbness in the dorsal and lateral right foot, positive right straight leg raise test (suspicious for nerve root irritation), limited lumbar range of motion, and muscle tenderness with spasm. The 8/4/21 MRI showed L5 over S1 spondylolisthesis and bilateral spondylolysis at S1, which is many times congenital and increases the risk of premature degenerative changes and nerve root impingement. Dr. Koutsky acknowledged this contributed to Petitioner's severe foraminal stenosis and arthritis at L5/S1 and was all likely preexisting. Diagnosis was L5/S1 spondylolisthesis, spondylolysis, stenosis, and radiculopathy. (Px2).

Dr. Koutsky opined the symptoms were "causally and directly related aggravation of injury that occurred in July and that ultimately leg to the symptoms he presented to me with." The condition was preexisting but wasn't causing any significant symptoms at the L5/S1 level. Therapy and possible injections were recommended, and if this failed possible decompression and fusion surgery. Petitioner was held off work. Petitioner continued to see Dr. Koutsky every two months or so. He had no real improvement while being "in and out" of physical therapy and performing a home exercise program, and he remains limited to seated/sedentary pending the injections, again with surgery possible if that fails. Dr. Koutsky testified that many people with Petitioner's type of preexisting condition can live a full asymptomatic life, but people with more physical jobs tend to deteriorate their back more rapidly given the congenital defects, "and that's what happened here." Noting his disagreement with Dr. Phillips, Dr. Koutsky testified that while Petitioner did have the preexisting condition and may have experienced symptoms prior to the work injury, "there's no question that

his work injury likely aggravated hi pre-existing condition and it's the aggravation of his preexisting condition which now required continued formal medical treatment, including not only the therapy but also the injections." He noted Dr. Phillips agreed with the planned epidural as reasonable. Asked about whether Petitioner having prior symptoms would impact his opinion, Dr. Koutsky noted Petitioner was working unrestricted work duties prior to his work injury or aggravation and then was unable to work full duty and continues to be unable. The injury caused a condition severity that restricted him from returning to full duty. (Px2).

On cross-exam, Dr. Koutsky testified his opinion Petitioner's symptoms were directly related to 7/21/21 was based on his understanding "that Petitioner was driving in a cab spotting trucks, and the constant vibration caused the symptoms, at least to the severity that they were when he presented to me." As to his knowledge of any pre-7/21/21 symptoms, Dr. Koutsky testified his knowledge of any basically came from Dr. Phillips' report, and that it didn't surprise him but that "the severity of the symptoms and the symptoms that he presented to me which he attributes at least to the activity that he did at work." He wasn't aware of any similar symptoms prior to the work injury, as noted by Dr. Phillips, and Petitioner never told him about any prior symptoms. He had not reviewed the Morris Hospital records. He was aware Petitioner went to urgent care in July 2021 and followed up with an orthopedic surgeon in Ottawa. He didn't know if Petitioner had any treatment between 9/22/21 and 4/4/22. Dr. Koutsky agreed Petitioner's MRI findings were chronic. Dr. Koutsky referred him for physical therapy and any such therapy, even with a chiropractor, would be reasonable, but he agreed Petitioner should not have been undergoing physical therapy and chiropractic treatment simultaneously. Petitioner never asked to revise the stated history of injury he documented. He didn't know if Petitioner ever returned to work after the sedentary work release. On redirect, he testified that based on Petitioner's stated history, his symptoms were not chronic before the work injury. Had he given a history of having symptoms prior to 7/21/21 and specifically that there was no injury or trauma, this would be different than the history Petitioner provided. (Px2).

Dr. Phillips provided his deposition on 5/28/24. An orthopedic spinal surgeon, he testified consistently with his 12/6/22 report. He reviewed the medical records prior to the exam, which are referenced in the report. Both the 7/22/21 ER note and the 7/26/21 note stated his symptoms started in May, that he denied injury and didn't identify anything that really caused the onset of pain and the worsening over the prior couple days. There was nothing indicated about a work injury. On 8/9/2, Petitioner had 5/5 strength. At PIC on 9/22/21, Petitioner reported his symptoms were not the result of an acute injury, instead attributing his pain to repetitive lifting and pulling at work. Dr. Phillips wasn't provided with any medical reflecting further treatment until he saw Dr. Koutsky on 4/4/22, where he attributed back and bilateral leg symptoms to a 7/21/21 work injury involving vibration and jarring while driving his spotter truck. Dr. Phillips agreed that the recommendation for physical therapy and possible injections based on the clinical picture were reasonable, just not related to work. Petitioner did not tell Dr. Phillips his symptoms started in May, denied any specific trauma injury, and reported pushing and pulling over a hundred pounds repetitively on 7/21/22 when he suddenly developed back and radiating leg pain. He complained of constant back pain, bilateral leg pain in an L5 nerve distribution, and weakness in his legs. He denied any similar pain before 7/21/21, which is inconsistent with the medical records. Neurologic exam was normal with reduced back range of motion and low back tenderness. There were no Waddell signs. Petitioner's spondylolisthesis was preexisting, grade 1 to 2 out of 5. The associated spondylolysis involves a chronic stress fracture. This is 99% developmental and typically starts as a teenager, degenerating over time with wear and tear, and many times becomes symptomatic later on in adult life. Theres no evidence in this case that these conditions were acutely caused. Dr. Phillips testified that 75% of the cases like this he sees involve people in more sedentary jobs. The condition can be asymptomatic, so symptoms are not unavoidable. Based on the records, Petitioner didn't report a specific 7/21/21 injury until he saw Dr. Koutsky on 4/4/22. He opined Petitioner's symptoms are not work related and any treatment or work restrictions Petitioner obtains for his lumbar condition are not work related. (Rx8).

On cross-exam, Dr. Phillips acknowledged he agreed that Petitioner had significant foraminal stenosis with likely L5 nerve root compression, and that this was likely the source of his leg pain. He also agreed that Petitioner was a candidate for injections and possible fusion surgery if that failed to resolve the symptoms. Work restrictions would not be unreasonable if he had ongoing severe pain. Petitioner showed no sign of malingering or exaggeration. Dr. Phillips was not aware of Petitioner's February 2024 FCE and agreed light work restrictions would be consistent with his subjective symptoms. He had no knowledge of the basis for Dr. Koutsky's causation opinion. In reviewing the 9/9/21 Employee Statement of Injury, he agreed it said Petitioner reported an injury on 7/22/21 to Rich Carney and reported repetitive lifting and climbing, pulling. He had no knowledge of what trailer stands weigh, but Petitioner told him he was pushing and pulling objects over 100 pounds. Heavy activities as Petitioner described in that Statement of Injury wouldn't structurally aggravate the spondylolisthesis condition, but he agreed it is possible it could provoke symptoms based on Petitioner's stated history in that document. However, he noted that these histories contained in the other evidence in this case conflicts with that account. Dr. Phillips acknowledged the 9/22/21 PIC report references low back pain since 7/21/21 and states: "associated with lifting." Asked whether he agreed with Dr. Koutsky that such lifting event could have aggravated the preexisting spondylolisthesis, Dr. Phillips testified: "Well, it depends again on how you're using the word aggravation. It clearly does not structurally change. So aggravated to me means made the condition structurally worse, which I don't believe is the case. Aggravated symptoms is a different issue; and yes, I mean - - again, I disagree with - - and I don't know what information Dr. Koutsky had, if he had the whole history from the records, but I disagree that – for the reasons we've discussed, that the injury - - well, there isn't an injury, but work activities, based on the records provided, aggravated his symptoms specifically on that date. . . He had symptoms preceding that date in the medical records." Dr. Phillips also noted that the histories noted in the accident report and PIC record were obtained were months after the initial stated histories of injury were documented. Petitioner never reported any other specific cause of his symptoms in his medical records. (Rx8).

Petitioner testified he hasn't had further medical treatment since Dr. Koutsky released him with the FCE restrictions in February 2024. He was never released to return to regular duty and hadn't worked anywhere since 7/21/21. He underwent therapy at Athletico from April 2022 through June 2023 (Px8). Petitioner testified he was honest with Dr. Phillips as to how he was injured and about his symptoms. As to bills submitted into evidence, to his knowledge there are all the medical expenses he's incurred to date. He denied any other intervening low back injuries since July 2021 and denied any improvement since then. He continues to have daily pain in his central lower back that vibrates down into his buttocks and leg with tingling in the toes. He has never been pain free since 7/21/21. He still has some cyclobenzaprine he takes when he really needs it and otherwise takes Tylenol once or twice a day. He uses his cane for walks over like two blocks but otherwise doesn't use it. It was not prescribed. He also uses a heating pad or TENS unit on occasion. He hasn't worked at all since 7/21/21 and hasn't received any lost time benefits. He hasn't undergone any injections and wants to continue his treatment with Dr. Koutsky. He hadn't spoken to anyone at Respondent since September 2021.

On cross, Petitioner testified he had pulled back muscles before but "nothing major like this." He started getting tingling into the right leg at work in May 2021, but not back pain, and again he attributed this to his work. Asked if he reported the injury to Respondent in May 2021, Petitioner testified he went to the ER in May 2021, possibly at Valley West in Sandwich, Illinois, he believed at the end of the month. He denied being examined and said no imaging was performed - "They just said it was sciatica and gave me a couple days off and I went back to work." His symptoms then continued to worsen after this but didn't seem to get worse when he was off work. The next time he sought treatment was on 7/22/21 at Morris Hospital. As to Rx1, Petitioner testified that when he reported repetitive lifting, he meant the trailer stands. The stands do have a wheel and are wheeled forward and back to put them at the front of the trailer. He agreed they don't have to be moved very far ("normally, no"). While he generally wheels them, he does have to lift them sometimes as the plates get bent up to where the wheel doesn't work well, which he testified happened quite a bit. There are 2 or 3 steps to get in

and out of the spotter truck. He denied that Carney told him he would provide him help with the stands if he asked.

Petitioner testified he didn't recall saying there was no trauma or injury on 7/22/21 at Morris Hospital but "I guess [I might have said it]." He then testified he didn't know where this information may have come from. He did report his symptoms began in May 2021. He did not state that there was no specific injury, and he doesn't know how that would be in the report. Petitioner did tell PIC on 9/22/21 that he'd had back pain since 7/21/21. He did not recall saying his symptoms were not the result of an injury with a sudden onset. He didn't say his injury wasn't associated with exertion and wouldn't know why that would be in the report. He did say it wasn't associated with blunt trauma, that it was associated with lifting, and that he had to lift up to 100 pounds. He acknowledged his attorney referred him to Dr. Koutsky. He did tell the doctor he was injured due to repetitive vibration and jarring in the truck and didn't mention lifting. Petitioner agreed the 3M docking yard was paved and the vibration and bouncing he experiences wasn't due to the floor surface. He testified: "Well, the bouncing. In a spotter truck the seat bounces. You don't have to hit a bump. That seat just bounces. You got that trailer on there, and it bounces too." He testified that he received a TENS unit in the mail and had no idea it was coming. He guessed it was prescribed by Dr. Koutsky but never asked him about it. Petitioner hasn't sought work within the FCE restrictions, testifying he wasn't sure if he could work or get a job with such restrictions, but he couldn't say for sure since he hasn't tried. On redirect, Petitioner denied that Respondent ever offered him light duty.

Rich Carney testified for Respondent via subpoena. Now retired, he was Respondent's Director of Operations on 7/21/21 and supervisor of the spotters, including Petitioner. Mr. Carney denied that Petitioner reported a 7/21/21 injury on 7/22/21, or that Petitioner said he got hurt on 7/22/21. He supervised Petitioner throughout his employment from 6/6/17 to 7/30/21. Mr. Carney testified that on or about 7/19/21 or 7/20/21, they talked in the late morning at the yard at 3M. He testified he always stopped to talk to and check in with all the spotters while making his rounds. He didn't know how it came up, but Petitioner said something about hurting his back, and when he asked Petitioner if it happened at work, he indicated it happened at home. He asked Petitioner if he was able to work for safety purposes and Petitioner said he could and continued to work. No one else was present for this conversation. He testified that the spotter job physically involves backing the horse under trailers, getting in and out of the truck, connecting or disconnecting it, going back to the truck, hydraulically lifting or setting down the trailer, and moving the trailer stands in and out. A spotter does have to move the trailer stands four to five feet for each trailer by pushing or pulling. Trailer stands would not be lifted as they were too heavy for someone to lift. He did not see spotters lifting 100 pounds, noting the job didn't require such heavy lifting. Moving the stands was not constant work. Mr. Carney has driven a spotter truck and testified there was no vibration, jarring or bouncing that would be any different than driving a car. The driving surface was smooth pavement at 3M. As to lifting performed by spotters, they would have to lift the trailers using the hydraulic system of the truck. All of the spotter trucks ("horses") were essentially the same with one air-ride cab seat, which absorbs vibration, and a 3M computer.

On cross-examination, Mr. Carney again indicated Petitioner never reported a work accident to him, but rather that he hurt his back at home. He testified someone from Respondent did reach out to him to discuss the 9/21/21 accident report, which indicated Petitioner reported the injury to him on 7/22/21 ("that's what he said"). He was asked if Petitioner reported a work accident on 7/22/21 and advised that Petitioner never told him about a work accident on that date or otherwise. He didn't recall ever seeing the accident report until the day prior to his testimony. To his knowledge, there was no documentation. He was not sent an email. Human Resources' Joe Garza was probably who called him about Petitioner's report in September 2021. He never completed anything in writing in this regard. He agreed he had nothing in writing documenting Petitioner being injured at home. No one from Respondent had contacted him about testifying, he received a subpoena the day before the trial. Mr. Carney could not say when Petitioner last worked for Respondent. Asked if the vibration in the spotter horse

was like that of a car, why it would have an air-ride seat, unlike a car, Mr. Carney testified he didn't know. He couldn't say when Petitioner stopped working for Respondent but it was after they had the conversation he testified to.

On rebuttal to Rich Carney's testimony, Petitioner denied ever telling Carney he was injured at home and he didn't recall talking to him before 7/22/21, noting Carney would come in and out of the facility and wouldn't always stop and talk to him. On cross, Petitioner testified he didn't know if his injury was from the bouncing around or what – he didn't say anything to Mr. Carney about lifting, he just told him it was from the vibration of the truck. Petitioner was driving the same truck in May as in July, so he believed in May that the vibration at work was causing symptoms.

Based on the testimony regarding the 7/16/21 ER visit, it was determined at hearing that, while Petitioner didn't know for sure, it was likely the facility was Northwestern Medicine Valley West Hospital. The matter was bifurcated in order to obtain records from this facility.

At the second hearing on 2/4/26, Petitioner was asked about a 7/16/21 ER visit, 6 days before the 7/21/21 alleged accident date, and he testified he had tingling down the right leg. He had no therapy or surgical recommendation, Norco and prednisone prescriptions. He returned to full duty after this while he couldn't work at all after 7/21/21. When his pain began on 7/21/21, he couldn't walk. Prior to that day he had no pain, just an annoying tingling – maybe a 3/10. By 7/22/21 he had 10/10 level pain and was unable to walk and took an ambulance to hospital Nothing about his pain had changed since his prior testimony. He still hasn't been able to return to work and continued to use a cane. He felt the accident made his pain permanently worse

The additional records that were obtained indicate Petitioner had undergone treatment for a back injury prior to 7/21/21. He was treated in the Valley West Hospital ER on 2/13/15 for musculoskeletal pain and soreness to the neck and low back from a lot of heavy lifting and moving, including a refrigerator. He was diagnosed with low back strain and received a muscle relaxer and NSAIDs (Rx10, pp. 565-566). Petitioner testified he was treated in May 2021 for tingling symptoms going down his right leg. He attributed the symptoms to work (Tr. 49-50) He was advised to take a couple of days of rest (Tr. 53-54).

Petitioner had undergone treatment for his back prior to 7/21/21. On 2/13/15, Petitioner was diagnosed with a low back strain at the Valley West Hospital (Northwestern) with complaints of neck and low back soreness after a lot of heavy lifting and moving, including grabbing a falling refrigerator while slipping on ice. (Rx10).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

In order for a work accident to be compensable in Illinois, the injury must arise out of and in the course of the employment with Respondent.

Petitioner testified that he developed low back pain due to vibration and bouncing in the spotter truck cab on a specific date, 7/21/21. He then testified that he initially developed leg tingling two months earlier, in May 2021, which he mainly felt while driving the truck but also felt with lifting and moving trailer stands.

Petitioner testified he reported the injury to Respondent on 7/22/21 when he called Rich Carney to call off work, and that Carney gave him a phone number to call. He further testified that when he did, he was advised he would have to go to Chicago to pick up accident reporting documentation. Petitioner then apparently didn't go to pick up the form until early September 2021, five or six weeks later. He then wanted his attorney to review it before he completed it and didn't complete the document until 9/9/21.

Rich Carney denied that Petitioner reported a 7/21/21 injury to him on 7/22/21 or on any other date. A 9/8/21 form in the PIC records indicates Respondent was requesting a consult "to determine compensability." The accident report Petitioner completed on 9/9/21 identified lifting, climbing, and pulling as the cause of his injury and said nothing about vibration or bouncing in the truck cab. It seems odd to the Arbitrator that the compensability determination would have been sought by Respondent on 9/8/21 if the Petitioner reported the accident to Carney on 7/22/21 and then called the workers' compensation department at that time.

While the alleged date of injury is 7/21/21, Petitioner sought treatment on 7/15/21, six days prior, and gave a five week history of low back pain into the leg and foot, more intense over the last two days. Previous pain in the past with sciatica was referenced without specificity as to how long ago in the past. The pain was indicated as nontraumatic, but it is noted he did heavy labor at work on a daily basis. This report also references a prior 6/7/21 visit for sciatica, but there was no report of such visit in the certified records. Thus, it is unclear what history of injury Petitioner may have provided on 6/7/21.

On 7/22/21 at the Morris Hospital ER, the stated history was back and right leg pain since May. Additionally, while there is reference to a 7/19/21 ER visit, there is no documentation received into evidence for a 7/19/22 ER visit. When Petitioner returned to Morris on 7/26/21, the report notes he had been using a cane the last few days. Petitioner testified that the day of the visit was the first day he used the cane. Both reports indicate no specific injury or trauma.

The 7/22/21 Morris visit does not reference onset of pain with the activities referenced in the 9/9/21 accident report, namely the lifting, climbing, and pulling. One would think if that is what Petitioner reported to Rich Carney on 7/22/21 that the same history would be in the 7/22/21 medical report from the ER.

Petitioner received IV pain medication at Morris Hospital but later that afternoon was taken to Northwestern Valley West Hospital by ambulance with back and right leg pain since mid-May that was worse the past week. Petitioner also noted multiple ER visits since early May. Other than the 7/15/21 visit, there are no other ER records the Arbitrator was able to locate in the evidentiary record which predate 7/22/21.

On 9/22/21, Petitioner was referred to PIC by Respondent, again 5 or 6 weeks after he said he first reported the injury to Carney and Respondent's workers' compensation personnel. He advised PIC that he developed low back pain on 7/21/21 associated with lifting, but also that it was not the result of an injury with sudden onset. The report also references repetitive lifting and pulling. He also reported no similar problems in the past. Also documented was report of a gradual onset about 2 months prior with constant pain and numbness.

Petitioner had a preexisting spondylolisthesis at L5/S1 related to spondylolysis that both Dr. Koutsky and Dr. Phillips testified was likely congenital and longstanding, which supports a long period of the development of lumbar degeneration. The evidence indicates the Petitioner has been working the same position since 2017. He has provided different theories of what physical activities of his job resulted in his symptoms to different providers. He testified he reported an injury on 7/22/21 that Rich Carney denies and that it took him about a month and a half to obtain an accident report and that he was advised that he had to pick it up in person in Chicago. He then however took it home, had his attorney review it, and sent it back via email, begging the question as to why he couldn't have obtained the document by email in the first place. The Petitioner testified

he sustained a lot of bouncing and vibration in his spotter truck, while Carney testified there was no more significant vibration or bouncing than a car, and that the floor at 3M was smooth, though he couldn't say why the truck then had an air-ride seat. While Dr. Koutsky testified that people with more physical jobs tend to deteriorate their back more rapidly given the congenital defects, "and that's what happened here", it is unclear what he meant by "physical job" in this case as he never documented or testified to what aspects of Petitioner's job made it physical or what his knowledge of the job was outside of driving the spotter truck. He also testified that there was "no question" that his work injury likely aggravated his pre-existing condition, despite it appearing that his opinion rested solely on the Petitioner's statement. As noted, this statement is not supported by multiple other pieces of evidence, including evidence that the symptoms began in May 2021. Petitioner provided two different histories of cause of onset to Dr. Koutsky and Dr. Phillips. Dr. Phillips indicated Petitioner reported he had no similar symptoms prior to 7/21/21, but the record reflects multiple treatment visits between May and July, several of which were not in the evidentiary record.

The Petitioner has preexisting and longstanding spondylolisthesis which the evidence supports was the result of a congenital defect that raises the risk of developing premature degenerative changes. Dr. Phillips testified that 3 out of 4 cases he sees with Petitioner's lumbar condition involve people working sedentary jobs, though he agreed the spondylolisthesis/spondylolysis can exist and be asymptomatic and he agreed that it's possible that pushing and pulling objects over 100 pounds could provoke symptoms.

The evidence in this case indicates to the Arbitrator that the Petitioner himself was not clear on what he believed caused his symptoms, and the support for causation from Dr. Koutsky is completely reliant on the history provided. The discrepancies in this case could be due to Petitioner being a poor historian, or some, such as when the injury was reported to Respondent, could be the Petitioner being somewhat disingenuous. Ths is unclear to the Arbitrator but it does impact the weight of the preponderance of the evidence.

The Arbitrator concludes that Petitioner has not shown any specific trauma that occurred on 7/21/21 and is relying on a repetitive trauma argument involving aggravation of a preexisting condition in his spine. However, given the differing histories and timelines, the dispute as to when he may have reported a work accident and to whom, the dispute as to how much vibration and bouncing there is in the spotter truck cab, and the missing medical reports lead the Arbitrator to conclude that the preponderance of the evidence indicates the Petitioner has failed to prove he sustained accidental injury to the lumbar spine which arose out of and in the course of his employment with Respondent on 7/21/21.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

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

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

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:

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

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

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

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:

Based on the Arbitrator's findings with regard to accident, above, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005380
Case Name	Keith Boze v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0308
Number of Pages of Decision	25
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 10/30/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEITH BOZE,
Petitioner,

vs. NO: 21 WC 005380

AMERICAN COAL COMPANY,
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 causal connection, occupational disease, permanent partial disability, and legal error, evidentiary error, Section 1(d) - Section 1(f), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 2, 2025 is hereby affirmed and adopted.

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

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

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

OCTOBER 30 2026

d: 09/29/26
KAD/ma
042

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005380
Case Name	Keith Boze v. The American Coal Company
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 10/2/2025

/s/Edward Lee, Arbitrator
Signature

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

KEITH BOZE
Employee/Petitioner

v.

AMERICAN COAL CO.
Employer/Respondent

Case # **21** WC **05380**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Herrin**, on **August 1, 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 **Sections 1(d)-(f) and 6(c) of the Occupational Diseases Act**

FINDINGS

On **October 21, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner's earnings were **$52.516.88.** and the average weekly wage was $**1,009.94**

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

Petitioner claims no medical.

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

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

ORDER

No benefits are awarded.

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

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

Edward Lee
Signature of Arbitrator

10/02/2025
Date

OCTOBER 2 2025

FINDINGS OF FACT

Petitioner testified that he worked five years at American Coal driving a truck. He stopped working five years prior to the date of arbitration. He testified that he struggles with respiratory situations. Petitioner testified that he required portable oxygen and a wheelchair and was observed using both at the time of arbitration. He testified he uses an inhaler. Petitioner testified that his condition affects his ability to walk testifying that if he walks far, he falls. He testified that he tries to walk outside to his truck every day. Petitioner testified that he used to mow, but he can no longer do any kind of physical activities. He testified that he struggles with shortness of breath at nighttime that sometimes affects his sleep which is worse when laying down. He testified that it sometimes hurts his ability to have conversations. Petitioner testified that he was currently seeing a doctor for his medical situations, including respiratory issues.

Petitioner testified that his primary care physician was Dr. Mansuri with Carterville Family Practice. He testified he also treated at Vanderbilt University in Tennessee for a heart condition. He testified that he has had a valve replacement in his heart, and he also has a pacemaker and defibrillator. He testified that his heart care had been moved to Dr. Khan at Prairie Cardiovascular. Petitioner testified that he sees a pulmonologist in Carbondale.

Petitioner testified that he had not worked since being laid off from the coal mine in October of 2016. He testified that after he was laid off, he applied for unemployment benefits and in November of 2016 he applied for Social Security Disability and was awarded Social Security Disability in January of 2017. He testified that he thought he was awarded the Social Security Disability due to his chronic heart condition.

Petitioner testified that he saw Dr. Istanbouly at Harrisburg Hospital for a black lung test and underwent pulmonary function testing. He testified that he was always honest with his treating physicians about problems he was having or not having. He testified that he used to smoke a pack a day having starting age 12 and quitting about 20 years prior to arbitration.

Petitioner testified that he worked as a truck driver at the coal mines hauling a waste product known as gob around the mine site. He testified there was a lot of dust. Petitioner testified that if he had not been laid off on October 21, 2016, he would have reported to his next shift at the mine.

Dr. Istanbouly is a physician specializing in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. He testified that in April of 2019 he moved his practice to the Chicago area, but he maintains satellite clinics in Southern Illinois where he visits once a month for two days. He testified from 2003 until 2019, he worked at the black lung clinic in Southern Illinois (Petitioner's Exhibit No. 1, pp. 5-6). Dr. Istanbouly testified that he took care of miners on a daily basis in Southern Illinois and he took pulmonary function tests and x-rays himself and interpreted them himself. He testified that he is not a B-reader and that being a B-reader is not required for the treatment of patients with lung disease. He testified that he does not need a B-reader report to diagnose black lung. He testified that at his current practice with Hines VA, only a minority of his practice involves treatment of patients with occupational diseases. (Petitioner's Exhibit No. 1, pp. 6-9).

Dr. Istanbouly testified that Petitioner stated he worked as a coal miner for five years above ground and eight months below ground and was retired at the time of his examination. He testified

that Petitioner told him he worked four to five shifts a week, each lasting 8 to 12 hours. He testified that Petitioner told him he quit working in the coal mine due to health issues rather than respiratory issues. Dr. Istanbouly testified that Petitioner related that he smoked a pack to a pack and a half daily for 14 years. He testified that Petitioner related a cough on a daily basis for years, with the intensity of the cough varying and same being productive of mild to moderate yellow sputum daily. Dr. Istanbouly testified that Petitioner reported he woke up short of breath about once per week, and he reported exertional dyspnea. Dr. Istanbouly noted that Petitioner's physical capacity seemed to be declining slowly. (Petitioner's Exhibit No. 1, pp. 9-15).

Dr Istanbouly testified spirometry was performed on Petitioner at Harrisburg Medical Center on the date of his examination. He testified that same revealed a moderately severe obstructive defect with FEV1 1.48 L, 55% of predicted; FVC 2.91 L, 80% of predicted; FEV1/FVC 51%. He testified that this is consistent with chronic obstructive pulmonary disease GOLD stage 2. Dr. Istanbouly testified he saw an x-ray report of Petitioner from the UIC Black Lung Clinic dated October 22, 2018, authored by B-reader Dr. Cohen, and same revealed bilateral interstitial changes more prominent in upper and middle lobes consistent with coal workers' pneumoconiosis with profusion of 1/0. Dr. Istanbouly testified that Petitioner has weakness of the left arm due to a stroke. He testified that Petitioner's history included coronary artery disease, stroke, and mitral valve disease. He testified that Petitioner's past surgical history included a pacemaker/defibrillator installment and mitral valve repair. Dr. Istanbouly testified that physical examination of Petitioner's lungs revealed reduced air bilaterally with no wheezing or rales. Dr. Istanbouly testified that he diagnosed Petitioner with coal workers' pneumoconiosis related to previous history of heavy coal dust inhalation for five years and eight months and COPD, GOLD stage 2 related to previous history of coal dust inhalation and smoking. He testified that long term coal dust inhalation was a contributing factor to Petitioner's respiratory symptoms of chronic daily cough with sputum, wheezing, and exertional dyspnea as well as the abnormality on Petitioner's x-ray and PFT. He testified that as a result of these findings, Petitioner is medically precluded from further exposure to the environment of a coal mine. (Petitioner's Exhibit No. 1, pp. 15-16).

Dr Istanbouly testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment,* 6th Edition and that under Table 5-4, Petitioner's FEV1 of 55% would place him in Class 2 impairment. He testified that GOLD is a staging system for the intensity of COPD. He testified that a reduced DLCO could be related to either coal workers' pneumoconiosis or COPD. He testified that for Petitioner, who has both smoking and mining history, there is no way to rule out either of those exposures as contributing. (Petitioner's Exhibit No. 1, pp. 16-18). Dr. Istanbouly testified that coal workers' pneumoconiosis can result in fibrosis or fibrotic changes apparent on radiographic studies and it can result in a chronic cough. (Petitioner's Exhibit No. 1, p. 19).

Dr. Istanbouly testified that the possibility of coal workers' pneumoconiosis cannot be ruled out based on negative chest x-ray. He testified that the existence of COPD, chronic daily cough, and exertional dyspnea increase the likelihood of coal workers' pneumoconiosis. (Petitioner's Exhibit No. 1, p. 21). Dr. Istanbouly testified that when an individual has been a smoker and a coal miner, the deleterious effects of each exposure are additive. He testified that medically speaking, he would consider both of them risk factors. He testified that hyperinflation on radiograph is consistent with COPD and a reduced FEV1 and can also be consistent with emphysema. (Petitioner's Exhibit No. 1, pp. 22-23).

Dr. Istanbouly saw Petitioner one time at his attorney's request for a workup for his state blood lung claim. In the past, for a number of years, he performed five to seven such examinations a month, always at the request of a claimant attorney. He testified that Petitioner's past history of smoking was significant and same has been associated with cough, sputum, and dyspnea on exertion. He testified that smoking is the leading cause of COPD and emphysema. He testified that there are causes for exertional dyspnea other than respiratory disease, including heart disease and deconditioning. He testified that Petitioner left work because of heart disease. (Petitioner's Exhibit No. 1, pp. 25-26). Dr. Istanbouly testified that he did not review any treatment records of Petitioner besides the B-reading of Dr. Robert Cohen for the chest x-ray taken October 22, 2018. He testified he believed there was also a PFT report of October 24, 2018. (Petitioner's Exhibit No. 1, pp. 27-28).

Dr. Istanbouly testified that the average consensus is it takes a minimum of 15 years to develop coal worker's pneumoconiosis. He testified that Petitioner told him he was employed the last five years as a truck driver. He testified that the level of exposure is not the only significant factor, but it is also the miner's susceptibility, and some people could develop bad reaction with minimal exposure. (Petitioner's Exhibit No. 1, p. 29). Dr. Istanbouly testified that Table 5-4 of the *AMA Guides* does not employ the GOLD standard, they have their own guidelines. (Petitioner's Exhibit No. 1, p. 29).

Dr. Istanbouly testified that he reviewed no chest imaging of Petitioner and he only reviewed the interpretation of Dr. Cohen. He did not see any other interpretations of chest imaging of Petitioner. He testified that typically, he reviews chest imaging, and it is his preference to have that imaging available. (Petitioner's Exhibit No. 1, pp. 30-32). Dr. Istanbouly testified he is neither an A or a B reader, and has never been an A or a B reader. When reviewing a B reader's evaluation, he testified that he does not look at the ILO scoring system, but he looks at the report. (Petitioner's Exhibit No. 1, pp. 37-39).

Dr. Robert A Cohen interpreted Petitioner's chest x-ray of October 22, 2018. He interpreted same as positive for parenchymal abnormalities q/p, upper and middle zones involved bilaterally of profusion 1/0. He noted the presence of a pacemaker over the left chest. Dr. Cohen is a NIOSH certified B-reader. (Petitioner's Exhibit No. 2, pp. 1-4).

Dr. Cristopher Meyer reviewed chest imaging of Petitioner including a chest radiograph from Herrin Hospital dated October 22, 2018, and a chest CT from Herrin Hospital dated April 12, 2017. Dr. Meyer testified that the chest x-ray was quality 2 due to improper position. (Respondent's Exhibit No. 1, p. 43). He testified the lungs were hyperinflated and he did not see any small or large opacities. He testified there were scattered calcified granulomas as well as changes of prior surgery. His impression of the radiograph was that there were no radiographic findings of coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, pp. 43-44).

Regarding the CT scan, Dr. Meyer testified that he saw no centrilobular paralymphatic nodules, no small opacities, no conglomerate fibrosis, and no large opacities. He noted scattered calcified granulomas and noted mild apical paraseptal emphysema in the focal area of ground glass opacity with what are known as airway-centric nodules, all clustered together in an area that looked like infection or aspiration. He testified that he observed mildly enlarged subcarinal lymph nodes and some nodal calcification, attributed to the changes of the prior open-heart surgery with a mitral valve replacement. He testified that he saw findings of healed granulomatous disease and a focal abnormality in Petitioner's right lower lobe that favored aspiration or infection. He testified that

his impression of the CT scan was similar to that of the chest radiograph, that there were no findings of clinical coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, pp. 44-45). Dr. Meyer testified that it was not surprising that the focal abnormality present in the CT was not present in the chest x-ray dated 16 months later, because it was probably an acute process that resolved. (Respondent's Exhibit No. 1, pp. 51-52). He testified that his interpretation of the CT scan was concordant with the interpretation of the radiologist who performed it. (Respondent's Exhibit No. 1, p. 59).

Dr. Meyer has been board certified in radiology since 1992. (Respondent's Exhibit No. 1, p. 8). Dr. Meyer became a B-reader in 1999. He testified that he was encouraged to take the B-reading examination by Dr. Jerome Wiot, a former chairman of the Department of Radiology at the University of Cincinnati and a member of the original committee responsible for designing the B-reader training and examination program. (Respondent's Exhibit No. 1, pp. 21-23). Dr. Meyer testified that the B-reader course involves a structured training module, which includes a syllabus with case images, online resources provided by NIOSH, and an intensive training weekend course hosted by the American College of Radiology. Dr. Meyer is currently co-director of the ACR B-reader course and as a member of the ACR Pneumoconiosis Task Force participated in developing the new syllabus and test materials provided to NIOSH in 2017. (Respondent's Exhibit No. 1, pp. 33-34).

Dr. Meyer testified that the B-reading course was a weekend training course in which there were a series of lectures describing the B-reading classification system. The course participants would then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course are typically experienced senior level B-readers who have been involved in the process for quite some time. (Respondent's Exhibit No. 1, pp. 33-34). Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reader exam. The old certification exam was six hours long with 120 chest x-rays to be categorized. The pass rate for that examination ran roughly 60 percent. The current exam is 24 multiple choice questions and 72 cases in five hours. (Respondent's Exhibit No. 1, p. 35). Dr. Meyer testified that generally radiologists have about ten percent higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is. (Respondent's Exhibit No. 1, pp. 35-36). Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination from 1/0 which is an almost normal but slightly abnormal examination. Dr. Meyer testified that making the distinction between a 1/0 versus a 0/1 is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well. (Respondent's Exhibit No. 1, p. 36).

Dr. Meyer testified that the B-reader must first evaluate the quality of the film to describe any limitations of the x-ray. Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. He testified it is important for a B-reader to show the small opacities and their distribution. (Respondent's Exhibit No. 1, p. 24). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described by small linear opacities. (Respondent's Exhibit No. 1, p. 30). The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung

zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. (Respondent's Exhibit No. 1, pp. 24-25). Dr. Meyer testified that profusion is basically trying to define the concentration of the small opacities in the lung. (Respondent's Exhibit No. 1, pp. 31-32). Dr. Meyer testified that NIOSH provides standard ILO films for the interpreter to compare and grade x-rays and there are no standard films for B-readings of CT scans. (Respondent's Exhibit No. 1, p. 66).

Dr. Meyer testified that the gold standard for determining lung disease is the pathologic review of lung tissue rather than radiographic interpretation. (Respondent's Exhibit No. 1, p. 68). Dr. Meyer testified that when he was reading films two days a week, he read between 150 to 200 chest x-rays in a week and depending upon the busyness of the service, he read 50 to 70 chest CT scans. (Respondent's Exhibit No. 1, pp. 16-17). Dr. Meyer testified that he performs approximately 50 to 100 B-readings and approximately 10 to 20 CT scans for the purpose of determining the presence, absence, or severity of occupational lung disease per month. (Respondent's Exhibit No. 1, p. 87).

Dr. Meyer testified that he did not have any history on Petitioner; he just had films he looked at. (Respondent's Exhibit No. 1, p. 56). He testified he prefers not to know anything about the individual; he just wants to look at the film and answer the question whether there is anything on there that is consistent with abnormalities of coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, p. 68). He testified that he wants to interpret the x-ray as objectively as possible and if he had a patient history, it might prejudice his reading. (Respondent's Exhibit No. 1, pp. 68-69). Dr. Meyer testified that two equally qualified B-readers could look at a film and arrive at different conclusions. (Respondent's Exhibit No. 1, p. 69). He testified that one of the issues is making sure that the individual who is interpreting the examinations has ample experience reading them to be able to sort out what is the background variation in normal. He testified that people are as different on the inside as they are on the outside. Part of trying to figure out whether or not there is an additional abnormality in the lung is recognizing that large spectrum of normal, which is why someone like himself spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal. (Respondent's Exhibit No. 1, pp. 69-70). Dr. Meyer testified that CTs are the most sensitive exams which have the highest opportunity to identify abnormalities. (Respondent's Exhibit No. 1, p. 71). He testified that he treats the chest x-ray as a piece of hard data and an individual's symptoms do not change what he sees on an x-ray. Dr. Meyer testified that category 1 coal workers' pneumoconiosis would generally be an x-ray diagnosis made by chest x-ray and sufficient exposure. (Respondent's Exhibit No. 1, pp. 72-73).

Dr. Meyer testified that all long-term coal miners are going to come out of the coal mine with some coal dust trapped in their lungs, however, the majority will not have changes in their lungs that qualify for coal workers' pneumoconiosis. He testified that the manifestations of pneumoconiosis are based on one's body's ability to clear that dust. Dr. Meyer testified that it is not possible to have coal workers' pneumoconiosis without having a tissue reaction to the coal dust. (Respondent's Exhibit No. 1, pp. 74-76). He testified that if he read an x-ray to be negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically. (Respondent's Exhibit No. 1, pp. 109-10). Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases. (Respondent's Exhibit No. 1, p. 113).

Dr. David Rosenberg conducted a review of medical records and chest imaging regarding Petitioner at the request of Respondent's counsel. (Respondent's Exhibit No. 2, p. 11). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980. (Respondent's Exhibit No. 2, pp. 4-5). In 1995, he received his board certification in occupational medicine. (Respondent's Exhibit No. 2, p. 5). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and the American College of Chest Physicians. (Respondent's Exhibit No. 3, p. 7). Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease. (Respondent's Exhibit No. 3, p. 9). Dr. Rosenberg has patients in his clinical practice he is treating who have black lung. (Respondent's Exhibit No. 2, p. 10).

Dr. Rosenberg reviewed a chest x-ray from Herrin Hospital dated October 22, 2018. He noted the film quality was 2. He testified the lung fields were clear without the presence of an interstitial nodularity with profusion 0/0. He testified there were scattered granulomatous changes, and a pacemaker was present in the left anterior chest and Petitioner's previous sternotomy and mitral valve replacement were evident. (Respondent's Exhibit No. 2, pp. 39-40). Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the quality of the film. He testified that he next evaluates whether there are small opacities. If they are present, he determines whether they are primary or secondary micronodular or linear changes. The reader next notes which of the lung zones are involved. The reader then notes the profusion rating and whether there are any large opacities. (Respondent's Exhibit No. 2, p. 40). Dr. Rosenberg testified that the reader then classifies any pleural abnormalities and notes on the B-reading form whether there are any other abnormalities. Dr. Rosenberg testified that the interpretation of the target film is done in comparison with the standard ILO films and he did that comparison with Petitioner's x-ray. (Respondent's Exhibit No. 2, p. 41).

Dr. Rosenberg also reviewed a chest CT dated April 12, 2017. He testified that CT scans are more diagnostic for the presence of interstitial lung disease than plain films. He testified that in order to diagnosis an individual with pneumoconiosis, he would need chest imaging that reveals the presence of the disease or pathology. He testified that the diagnosis cannot be made only upon history of exposure or spirometry. (Respondent's Exhibit No. 2, pp. 41-42).

Dr. Rosenberg testified that he was able to reach final conclusions regarding Petitioner. He testified Petitioner had a significant past smoking history up to 45 pack years and significant heart history dating back to 1998. He testified that Petitioner described shortness of breath and exercise limitations and radiographically he does not have findings of a pneumoconiosis.

Dr. Rosenberg testified that from an impairment perspective, Petitioner's only valid pulmonary function study was taken at Herrin Hospital on January 11, 2017, and revealed moderate obstruction with a post-bronchodilator value of FEV1 of 1.8 liters, 64% predicted. Dr. Rosenberg testified that Petitioner is not disabled from performing his work as a truck driver. He testified that even if one assumes that Petitioner is disabled from a pulmonary perspective, it did not relate to past coal mine dust exposure. He testified that Petitioner is disabled in relation to his extensive cardiac history. (Respondent's Exhibit No. 2, pp. 43-45). Dr. Rosenberg testified that Petitioner does not have an obstruction related to coal dust exposure, but rather his findings are

classic for reduction of FEV1 related to his previous smoking history. He testified that the magnitude of the loss in his FEV1 is not consistent with coal mine dust etiology, and there is no scientific basis for attributing any bronchitis in Petitioner's case to his remote coal dust exposure. He testified that chronic bronchitis dissipates within months after exposure ceases. He testified that any residual coughing likely relates to chronic congestive heart failure. (Respondent's Exhibit No. 2, pp. 49-50). Dr. Rosenberg concluded that it can be stated with a reasonable degree of medical certainty that Petitioner does not have coal worker's pneumoconiosis, and any impairment is unrelated to past coal mine dust exposure. He testified that Petitioner has disorders of the whole person, namely smoking-related COPD and chronic heart disease. (Respondent's Exhibit No. 2, pp. 50-51). Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. He testified that chronic bronchitis is cough and sputum production which occurs on a regular basis, three months of the year for two consecutive years. He testified that this diagnosis did not appear anywhere in the treatment records he reviewed. (Respondent's Exhibit No. 2, p. 33).

Dr. Rosenberg testified that obstructive lung disease can be multifactorial in origin and the effects of smoking and coal mine dust can be additive. (Respondent's Exhibit No. 2, pp. 60-61). Dr. Rosenberg testified that pathology is the gold standard for determining coal workers' pneumoconiosis. (Respondent's Exhibit No. 2, pp. 79-80). Dr. Rosenberg testified that the value of the B Reader Program would be to help guarantee, or at least help provide a basis of similarity or consistency in the readings of chest x-rays. (Respondent's Exhibit No. 2, p.86).

Medical records of the Coal Miner's Clinic of Murphysboro were admitted into evidence. Pulmonary function tests from October 24, 2018, revealed an FVC of 2.16 L (56% of predicted); FEV1 of 1.6 L (56% of predicted); and FEV1/FVC of 74.4% (99% of predicted). (Petitioner's Exhibit No. 3, pp. 1-4).

Medical records of SIH – St Joseph, Murphysboro were admitted into evidence. Petitioner was admitted on March 1, 2025, for complaints of generalized weakness, cough, and malaise. Prior to admission at Murphysboro he was admitted at SIH Herrin where he originally presented to the ED on February 4, 2025, with generalized weakness, cough, and malaise, and was found to be Influenza A positive. (Petitioner's Exhibit No. 4, p. 17). During the admission he developed acute respiratory failure requiring supplemental oxygen and was treated for a COPD exacerbation triggered by influenza. A CT scan of the chest revealed bilateral lower lobe consolidation, suspected to be secondary to aspiration, and he was started empirically on Zosyn and vancomycin. His course was complicated by wide complex tachycardia, for which cardiology was consulted and recommended titration of Coreg and the addition of amiodarone. He subsequently developed acute kidney injury with oliguria and uremia, requiring transfer to the intensive care unit for temporary hemodialysis but later recovered renal function with good urine output and no need for ongoing dialysis. Over the course of hospitalization he gradually improved to near baseline, was weaned off supplemental oxygen, and was transferred to a swing bed unit for rehabilitation. (Petitioner's Exhibit No. 4, p. 23).

During his stay in the rehabilitation unit, he initially participated in therapy but later began refusing sessions due to feeling exhausted. His swing bed stay was complicated by an E. coli urinary tract infection. He continued to have hypoxemia related to a persistent left-sided pleural effusion, and home oxygen was arranged. He also required intensified diuresis with several days of twice-daily Lasix. At the time of discharge on March 21, 2025, his condition was stable. He was

alert, cooperative, and in no acute distress. Vital signs were acceptable, heart and lung examinations showed regular rhythm with diminished breath sounds on the left but no acute findings otherwise. He was discharged home on supplemental oxygen and Lasix. (Petitioner's Exhibit No. 4, pp. 23-24).

Medical records of SIH – Herrin Hospital were admitted into evidence. On January 11, 2017, Petitioner underwent spirometry testing. At that time he was noted to be 62 years of age, 66 inches in height with a weight of 156.5 pounds. He had a smoking history of 1.5 packs a day for 30 years having quit 6 months prior. Dr. Bambra interpreted the spirometry to reveal a moderately severe obstruction. Pre-bronchodilator FVC was 2.93, 83% predicted; FEV1 was 1.65, 59% predicted; and the FEV1/FVC ratio was 56. Post-bronchodilator FVC was 2.66, 75% predicted; FEV1 was 1.80, 64%; and the FEV1/FVC ratio was 68%. Pre-bronchodilator RV was 3.05, 148% predicted; TLC was 5.59, 90% . (Respondent's Exhibit No. 4, pp. 244-49).

On March 30, 2018, Petitioner presented to the ED for sudden onset of dizziness. Chest x-ray revealed borderline cardiomegaly with interstitial edema and probable left plural effusion. (Respondent's Exhibit No. 4, p. 223-24). On March 31, 2018, he denied shortness of breath and cough. Physical examination of the lungs revealed diffuse respiratory wheezing. (Respondent's Exhibit No. 4, pp. 237-39). The discharge diagnosis was left cerebellar hemispheric infarct. (Respondent's Exhibit No. 4, p. 223).

Petitioner underwent a chest x-ray on October 22, 2018. Impression was no acute cardiopulmonary disease. There was mild cardiomegaly, prosthetic mitral valve, and three lead automatic implantable cardiac defibrillator. Old granulomas disease was also noted. (Respondent's Exhibit No. 4, p. 222).

Petitioner was admitted on October 17, 2019, for rehab for cerebral infarction and CVA. He remained in rehab through November 18, 2019. There were no complaints of cough, wheezing, chest pain, etc. Throughout his stay in rehab, his oxygen saturation remained between 91% and 98%. Physical examination of the chest remained normal and negative throughout that time. (Respondent's Exhibit No. 4, pp. 135-207). On February 19, 2020, Petitioner underwent a chest x-ray for history of cough. Impression was questionable mild infiltrate in the right lower lobe. (Respondent's Exhibit No. 4, p. 110). Petitioner underwent chest x-ray on August 4, 2022. Impression was left basilar atelectasis and/or pneumonia. (Respondent's Exhibit No. 4, pp. 96-97).

The Petitioner was admitted on April 17, 2023, for chest pain and shortness of breath. He complained of cough with yellow sputum. Review of systems respiratory was positive for cough, chest tightness and shortness of breath and negative for wheezing. Physical examination of the lungs revealed diffuse rhonchi on auscultation bilaterally. (Respondent's Exhibit No. 4, pp. 63-73). Chest x-ray was performed on April 17, 2023, and impression was suspicious for mild or early changes of perihilar interstitial pulmonary vascular congestion. (Respondent's Exhibit No. 4, pp. 77-78). Cardiology consultation was performed and same indicated that the provider felt Petitioner suffered from pulmonary infection given his complaint of chills and elevated white blood count with a low BNP. Cardiology interpretd his chest x-ray to reveal perihilar congestion and concluded that the Petitioner's shortness of breath was multifactorial and associated with pneumonia and congestive heart failure. (Respondent's Exhibit No. 4, pp. 73-79).

On June 23, 2024, Petitioner presented to the ED for evaluation of a syncopal episode at home and was admitted. Physical examination of pulmonary revealed normal effort and breath

sounds. (Respondent's Exhibit No. 4, pp. 2-4). Petitioner underwent a chest X-ray on June 24, 2024, the impression was no acute radiographic abnormality. (Respondent's Exhibit No. 4, p. 23). Petitioner underwent a chest X-ray on June 26, 2024, and the impression was equivocal mild ground-glass of the right upper lobe, thought to be secondary to the normal overlying chest wall; Mild pneumonia, pneumonitis, atelectasis, or pulmonary edema cannot be excluded. (Respondent's Exhibit No. 4, p. 37). Petitioner was discharged on June 26, 2024. General review of systems was negative and physical examination of the lungs revealed same were clear to auscultation bilaterally. (Respondent's Exhibit No. 4, p. 41).

Petitioner presented to the ED on February 4, 2025, for complaint of generalized weakness ongoing for a week. He related cough, congestion and generalized weakness. (Petitioner's Exhibit No. 5, p. 4). Physical examination of the chest revealed normal effort and no distress with normal breath sounds. Chest x-ray performed revealed calcified granulomas but no pneumonia or effusion. (Petitioner's Exhibit No. 5, p. 5). Cardiology consult was requested for episodes of wide complex tachycardia and a premature ventricular contractions. (Petitioner's Exhibit No. 5, pp. 18-19). On February 8, 2025, Petitioner underwent a chest x-ray. The impression was persistent bibasilar pneumonia. (Petitioner's Exhibit No. 5, p. 50).

On February 13, 2025, the Petitioner underwent chest x-ray that revealed persistent left greater than right vascular consolidation. (Petitioner's Exhibit No. 5, p. 261). On February 14, 2025, he related he was feeling fair and denied chest pain or shortness of breath. CT of the abdomen and pelvis performed February 16, 2025, revealed small amount of ascites and small right pleural effusion. (Petitioner's Exhibit No. 5, p. 217). Chest x-ray taken February 15, 2025, revealed hazy ground-glass opacities in the right lung base. (Petitioner's Exhibit No. 5, p. 259). He was ultimately discharged to a swingbed facility on March 1, 2025. His primary discharge diagnoses were generalized weakness, COPD exacerbation, acute hypoxic respiratory failure, aspiration pneumonia bilateral lower lobes, influenza A, transaminitis, HEP A infection, hyperbilirubinemia, coagulopathy, elevated TSH and alteration in performance of activities of daily living. (Petitioner's Exhibit No. 5, p. 14).

Medical records of Vanderbilt University were admitted into evidence. On December 11, 1998, Petitioner underwent mitral valve replacement. (Respondent's Exhibit No. 3, pp. 54-57). He underwent chest x-ray on December 12, 1998, same revealed an increasing right lower lobe atelectasis likely due to mucus plugging. (Respondent's Exhibit No. 3, p. 58). There was minor left atelectasis. A chest x-ray performed on December 13, 1998, revealed no pneumothorax and worsening aeration in the right lung base. There was near complete atelectasis of the lateral segment of the right middle lobe and right lower lobe, and some right pleural effusion. The left lung remained clear except for minimal basilar atelectasis. (Respondent's Exhibit No. 3, p. 59). X-ray performed on December 14, 1998, revealed atelectasis of the right middle and right lower lobe suggesting mucus plugging in the bronchus intermedius. There was some left basilar atelectasis also noted. (Respondent's Exhibit No. 3, p. 61). Discharge summary dated December 22, 1998, reveals that Petitioner presented with CVA and myocardial infarction secondary to emboli from a left arterial clot. (Respondent's Exhibit No. 3, p. 62).

Petitioner was seen on March 26, 2007. He stated he continued in his trucking job with a local fuel delivery company and was functioning well. Review of systems was negative. Petitioner was doing well from a cardiovascular and arrhythmia standpoint. He remained in sinus rhythm according to his EKG. (Respondent's Exhibit No. 3, p. 73). He was seen on March 13, 2009.

Petitioner reported no symptoms of tachycardia, PND, orthopnea, chest pain or other cardiovascular symptoms. He did not have any fatigue or dyspnea or other symptoms of atrial fibrillation. Review of systems was negative. Physical examination of the chest revealed the lungs clear to auscultation. Assessment was persistent atrial fibrillation, coronary artery disease, congestive heart failure functional class 1-2 and mitral stenosis status post replacement. (Respondent's Exhibit No. 3, pp. 75-76). Petitioner was seen on May 21, 2010. Review of systems was negative. Physical examination of the chest revealed lung fields clear. (Respondent's Exhibit No. 3, pp. 77-78).

Petitioner was seen on October 7, 2011. He reported some shortness of breath and coughing intermittently. He had some concern over a spot on his lung found on a chest x-ray and that his heart was enlarged by chest x-ray under surveillance by the Department of Health and Human Services for coal miner's lung disease. Review of systems was negative. It was charted that he did have some thickening of the skin and signs of chronic coal miner's work exposure. Physical examination of the chest revealed the lungs relatively clear with a few scattered rales. (Respondent's Exhibit No. 3, pp. 79-80). He was seen on November 28, 2012, and review of systems was normal. Physical examination of the chest revealed right lower lobe rales and fine crackles. His upper lung fields were clear. (Respondent's Exhibit No. 3, pp. 81-82).

Petitioner was seen January 23, 2015. He was working as a coal miner. Review of systems respiratory revealed no cough or adventitious sound. Physical examination of the chest revealed normal breath sounds diminished to auscultation. The assessment was persistent atrial fibrillation. (Respondent's Exhibit No. 3, pp. 87-88). Petitioner was seen on March 4, 2016, for follow up for pneumonia. He stated he had fluid on the lungs for the past month but his wife states that he's been refusing to go to the doctor. Physical examination of the chest revealed normal breath sounds with lungs clear to auscultation. The assessment was atrial fibrillation and shortness of breath. Doppler study revealed a severely reduced left ventricular ejection fraction with diffusion hypokinesis. (Respondent's Exhibit No. 3, pp. 133-138).

Petitioner was seen on April 21, 2016. Review of systems respiratory was negative for cough and wheezing. (Respondent's Exhibit No. 3, pp. 123-124). Petitioner underwent a chest x-ray on April 22, 2016, and same was interpreted as poststernotomy and mitral valve replacement. No pneumothorax was seen, and mild cephalization of flow with small effusions but no overt edema was seen. (Respondent's Exhibit No. 3, p. 118).

In preoperative evaluation for anesthesia on May 26, 2016, it was noted the Petitioner had fair exercise tolerance of 2-3 METs. It was noted he quit smoking less than 3 months prior. He had a greater than 20 pack year history of smoking. (Respondent's Exhibit No. 3, p. 104). Review of systems was normal. Physical examination of the chest revealed the lungs were clear to auscultation bilaterally with normal breath sounds. (Respondent's Exhibit No. 3, p. 102). He underwent successful ablation. (Respondent's Exhibit No. 3, p. 99). In a chart entry of June 3, 2016, it is indicated that the Petitioner was experiencing worsening shortness of breath and chest discomfort. His wife indicated he was suffering from exertional dyspnea since his implant. (Respondent's Exhibit No. 3, p. 98). He underwent chest x-ray on September 14, 2016, which is interpreted as revealing, in addition to his ICD, previous granulomatous disease, but was an otherwise negative exam. (Respondent's Exhibit No. 3, p. 96).

Petitioner was seen on January 30, 2017, for heart failure. It was noted he worked in the coal mine for a number of years including below ground and above ground, He recently underwent

a defibrillator implantation and since that time, has felt more short of breath. He can only walk 50-100 feet before he has to stop. Review of systems constitutional indicates he feels very fatigued. Review of systems respiratory was positive for trouble breathing with activity. Physical examination of the chest revealed diffuse inspiratory crackles in the bases bilaterally. He was recently given inhalers and told that he had significant obstructive disease. He had been taking Albuterol intermittently with no other inhaler treatments. Petitioner underwent chest x-ray that was interpreted as revealing the lungs to be clear, except for previous granulomatous disease. (Respondent's Exhibit No. 3, pp. 161-164).

Petitioner was seen on May 8, 2017. He had been taking his inhalers regularly. Review of systems respiratory revealed no trouble breathing. Physical examination of the chest revealed basilar crackles. (Respondent's Exhibit No. 3, pp. 141-144). Petitioner was seen on April 11, 2018. He denied chest pain or shortness of breath. (Respondent's Exhibit No. 3, p. 174). Physical examination of the chest reveal the lungs clear to auscultation. (Respondent's Exhibit No. 3, p. 176). EKG revealed atrial fibrillation with complete heart block and ventricular pacing at 70 beats a minute. Impression was chronic coronary artery disease, mitral valve replacement, AV node ablation, poorly controlled hypertension and INRs with recent TIA. (Respondent's Exhibit No. 3, p. 177). He was seen on April 26, 2019. On review of systems, Petitioner denied chest pain, shortness of breath, palpitations, dizziness, syncope, or orthopnea. (Respondent's Exhibit No. 3, p. 200). Telephone encounter of October 15, 2019, indicated that the Petitioner called to report that he was in Barnes Jewish Hospital in St. Louis for an embolic stroke. (Respondent's Exhibit No. 3, p. 206).

Petitioner was seen on June 30, 2021. Review of cardiac system revealed no chest pain, shortness of breath, palpitations, dizziness, syncope, orthopnea, PND, swelling or claudication. (Respondent's Exhibit No. 3, p. 227). Medications taken were Albuterol, aspirin, Lipitor, Symbicort, Carvedilol, Lasix, Norco, Potassium chloride, Zoloft, and Coumadin. (Respondent's Exhibit No. 3, pp. 229-230). Review of systems respiratory was positive for cough, sputum, and shortness of breath. (Respondent's Exhibit No. 3, p. 230). His O2 saturation was 96%. Physical examination of the chest revealed the lungs clear to auscultation. (Respondent's Exhibit No. 3, p. 231).

Petitioner was seen on April 26, 2023. He had quit smoking six years prior. He admitted to occasional alcohol use. Vital signs indicated his oxygen saturation was 100%. He was noted to be chronically ill-appearing. Physical examination of the chest revealed normal effort with no cough. (Respondent's Exhibit No. 3, p. 46). In regard to his atrial fibrillation it was noted that he had very good diagnostics on his resynchronization device. (Respondent's Exhibit No. 3, p. 47).

Medical records of Shawnee Healthcare – Carterville Family Practice were admitted into evidence. On December 27, 2016, Petitioner was seen for dizziness. Review of systems was negative other than the neck stiffness. (Respondent's Exhibit No. 5, p. 571). Physical examination respiratory showed normal inspection, auscultation and effort. (Respondent's Exhibit No. 5, p. 574).

On February 7, 2017, Petitioner was seen for cold symptoms. He described his cough as barking and productive of clear sputum, which occurred persistently. (Respondent's Exhibit No. 5, p. 563). Physical examination respiratory showed a normal inspection and effort. Assessments were chronic obstructive pulmonary disease, congestive heart failure and long-term use of anti-coagulants. (Respondent's Exhibit No. 5, p. 566). On April 11, 2017, Petitioner was seen for follow

up of his COPD. Physical examination of the lungs showed no dyspnea. (Respondent's Exhibit No. 5, pp. 555-561). On May 8, 2017, Petitioner was seen. Physical examination respiratory showed normal work of breathing on room air with basilar crackles. (Respondent's Exhibit No. 5, p. 551). On March 30, 2018, Petitioner had a two day hospital stay for left cerebellar hemispheric infarct. (Respondent's Exhibit No. 5, p. 515). He has a history of COPD and was noted to have wheezing on exam. (Respondent's Exhibit No. 5, p. 525). He was started on prednisone therapy with improvement in his symptoms. Repeat CT obtained and noted to have new focus of hypodensity medial right cerebellar hemisphere compatible with acute/subacute infarct. (Respondent's Exhibit No. 5, pp. 511-512).

Petitioner had a follow up on April 4, 2018. Physical examination of the lungs showed no dyspnea, wheezing, rales, crackles, or rhonchi and breath sounds were normal. There was diminished air movement in the bilateral lower lobes with crackles. (Respondent's Exhibit No. 5, p. 506). He was seen on April 16, 2018, for follow up for his systolic heart failure. He had no complaints or concerns at that time. (Respondent's Exhibit No. 5, p. 490). Physical examination of the lungs were clear except for diminished air movement and bilateral lower lobe crackles. (Respondent's Exhibit No. 5, p. 494). On April 17, 2018, Petitioner underwent a chest x-ray due to a productive cough. There was mild hyperexpansion of both lungs. Scattered pulmonary nodular densities were noted and assumed to be likely due to prior granulomatous process. There was a question of mild haziness along the left cardiac margin and vague lingular infiltrate was not excluded. (Respondent's Exhibit No. 5, p. 487). CT of the chest was also performed. The impression showed a subsolid 1.7 cm slightly spiculated mass-like opacity in the upper aspect of the right lower lobe situated peripherally, which could be post inflammatory etiology or fibrotic in nature. Neoplastic condition at that level could not be excluded. There was soft tissue abundance in the right hilum and conglomerate lymph nodes in the subcarinal space. Some of those lymph nodes had partial calcification. The appearance was likely related to old granulomatous disease inflammation. A metastatic etiology was not excluded. It was noted that conceivably coal workers' pneumoconiosis could have a similar appearance, although there were no bulky calcified perihilar lymph nodes seen. There were changes consistent with Petitioner's history of chronic obstructive pulmonary disease with hyperinflation and subtle biapical fibrotic changes with paraseptal emphysema. (Respondent's Exhibit No. 5, p. 488).

On June 29, 2018, Petitioner followed up through Prairie Cardiovascular Consultants. (Respondent's Exhibit No. 5, p. 473). His occupational history was noted to be a truck driver. The social history on this visit noted he was a former smoker having previously smoked one pack of cigarettes per day for 28 years, quitting in May of 2016. (Respondent's Exhibit No. 5, p. 474). Review of systems respiratory was positive for shortness of breath but negative for cough or snoring. Physical examination of the chest showed normal effort and breath sounds with no respiratory distress. (Respondent's Exhibit No. 5, p. 476). On July 13, 2018, Petitioner had a three month follow up regarding the degeneration of his intervertebral disc. (Respondent's Exhibit No. 5, p. 466). No cough was reported at this time. Physical examination of the lungs continued to show diminished air movement with bilateral lower lobe crackles. (Respondent's Exhibit No. 5, p. 470).

Petitioner was seen on October 12, 2018. Review of systems respiratory was negative. Physical examination of the chest showed diminished air movement with bilateral lower lobe crackles. He was continuing on the pain medications for his back. (Respondent's Exhibit No. 5, pp. 456-457). Petitioner underwent chest x-ray on October 22, 2018. Interpretation was

questionable subtle infiltrate in the right lower lobe, otherwise unremarkable. (Respondent's Exhibit No. 5, p. 452).

Petitioner was seen on April 8, 2019. On review of systems the Petitioner denied cough or shortness of breath. Physical examination of the chest revealed normal effort and no adventitious sounds. (Respondent's Exhibit No. 5, pp. 440-41). Petitioner was seen on July 16, 2019. Petitioner was a pack a day smoker for 30 years. He reported no cough, wheeze or shortness of breath. Physical examination of the chest revealed normal effort with no adventitious sounds. (Respondent's Exhibit No. 5, pp. 424-25). Petitioner was seen on November 19, 2019. He related that he suffered a CVA on October 13, 2019, and went to the emergency room and thereafter was transferred to Barnes for 31 days. He denied cough or shortness of breath. Physical examination of the chest revealed no dyspnea or adventitious sounds. The assessment was degeneration of intervertebral disc, atrial fibrillation, cerebral vascular accident and overweight. (Respondent's Exhibit No. 5, pp. 381-85). Petitioner was seen on December 4, 2019, in follow up for chronic obstructive lung disease and to discuss getting a nebulizer machine. His oxygen saturation was noted to be 97%. Petitioner was noted to be a former smoker. He related he has been having some shortness of breath and cough. Physical examination of the chest revealed good air movement without adventitious sounds. (Respondent's Exhibit No. 5, pp. 372-75).

Petitioner was seen on January 28, 2020. Physical examination of the chest revealed no dyspnea and no adventitious sounds. (Respondent's Exhibit No. 5, pp. 356-60). Petitioner was seen on February 18, 2020. He denied shortness of breath but related productive cough. Physical examination of the chest revealed no dyspnea and no adventitious sounds. (Respondent's Exhibit No. 5, pp. 351-55). He underwent chest x-ray on February 19, 2020, due to cough. This was questionable for mild infiltrate in the right lower lobe. (Respondent's Exhibit No. 5, p. 350). He was seen on March 17, 2020. He denied shortness of breath. Physical examination this date of the chest revealed no dyspnea, normal breath sounds and no adventitious sounds. (Respondent's Exhibit No. 5, pp. 345-49).

Petitioner had a telephone visit on May 14, 2020. He denied cough or shortness of breath. (Respondent's Exhibit No. 5, pp. 340-44). He was seen on July 14, 2020. Physical examination of the chest revealed no dyspnea and no adventitious sounds. The assessment was hyperlipidemia, chronic obstructive lung disease, degeneration of intervertebral disc and edema of lower extremity. (Respondent's Exhibit No. 5, pp. 331-35). Petitioner was seen on October 14, 2020. He denied cough, wheeze or shortness of breath. Physical examination of the chest revealed no dyspnea and no adventitious sounds. (Respondent's Exhibit No. 5, pp. 321-26).

Petitioner was seen on April 22, 2021. He denied shortness of breath. Physical examination of the chest revealed no dyspnea or adventitious sounds. The assessment was hypertension, chronic obstructive lung disease, degeneration of intervertebral disc, edema of lower extremity and obesity class 1. (Respondent's Exhibit No. 5, pp. 301-06). He was seen on September 22, 2021 at which time he denied shortness of breath. (Respondent's Exhibit No. 5, pp. 295-300). He was seen on October 5, 2021. He Petitioner related body aches, a decreased appetite, diarrhea, cough and wheeze. He denied shortness of breath. The assessment was cough and pneumonia. (Respondent's Exhibit No. 5, pp. 289-94). Petitioner was seen on October 11, 2021. He had no complaint of shortness of breath although he had some chest congestion. Under review of systems Petitioner had complaint of cough and shortness of breath. The assessment was cough. (Respondent's Exhibit

No. 5, pp. 283-88). He was seen on December 22, 2021. He denied shortness of breath. (Respondent's Exhibit No. 5, pp. 267-72).

Petitioner was seen on April 4, 2022. He denied shortness of breath. Physical examination of the chest revealed normal effort with no adventitious sounds. The assessment was degeneration of intervertebral disc, hypertension and hyperlipidemia. (Respondent's Exhibit No. 5, p. 259). He is seen on July 12, 2022 for sore throat, body aches and dizziness. Physical examination of the chest revealed normal respiratory effort and breath sounds with no adventitious sounds. The assessment was acute upper respiratory infection and cough. (Respondent's Exhibit No. 5, p. 246). Petitioner was seen on August 4, 2022. It was noted that Petitioner was diagnosed with COVID on July 14, 2022. (Respondent's Exhibit No. 5, p. 237). He complained of cough, wheeze and shortness of breath with chest congestion. Physical examination of the chest revealed normal effort with decreased breath sounds but no adventitious sounds. (Respondent's Exhibit No. 5, p. 233). The Petitioner was seen on January 4, 2023. He had no complaint of shortness of breath. He also denied cough or wheeze. Physical examination of the chest revealed normal effort and breath sounds with no adventitious sounds. (Respondent's Exhibit No. 5, p. 177). Petitioner was seen on April 17, 2023, with complaint that he could not catch his breath and had difficulty in taking a deep breath. He also complained of chest pain and coughing up sputum. He related that he woke up that morning with significant shortness of breath. Physical examination of the chest revealed Petitioner to suffer from dyspnea and he was tachypneic, but there were no adventitious sounds. The assessment was acute chest pain and while it was noted that his vitals were stable because of his significant cardiac history he was advised to go to the ER for evaluation. (Respondent's Exhibit No. 5, p. 103).

Petitioner was seen on May 3, 2023, for follow up for hospitalization. It was charted that the Petitioner was admitted to Herrin Hospital two weeks prior with a diagnosis of COPD exacerbation. This date he had no shortness of breath, and no cough or wheeze. Physical examination of the chest revealed normal effort and breath sounds with expiratory wheezing. (Respondent's Exhibit No. 5, p. 96). He was seen on August 2, 2023, in follow up for his hypertension. He denied shortness of breath, cough or wheeze. Physical examination of the chest revealed no dyspnea with normal effort and breath sounds and no adventitious sounds. The assessment was hyperlipidemia, edema of lower extremity, degeneration of intervertebral disc, chronic obstructive lung disease and hypertension. (Respondent's Exhibit No. 5, pp. 75-76). Petitioner was seen on September 19, 2023, for sinus problems. He also related being short of breath and suffering from cough. Physical examination of the chest revealed no dyspnea but decreased breath sounds with expiratory wheeze. The assessment was acute exacerbation of COPD for which he was prescribed prednisone and doxycycline. (Respondent's Exhibit No. 5, p. 59). Petitioner was seen on November 1, 2023. Physical examination of the chest revealed no dyspnea with normal effort and breath sounds. There were no adventitious sounds. (Respondent's Exhibit No. 5, p. 47).

Petitioner was seen on February 1, 2024, in follow-up for chronic obstructive lung disease and essential hypertension. (Respondent's Exhibit No. 5, p. 26). He denied cough or shortness of breath. Physical examination of chest revealed normal effort and breath sounds. (Respondent's Exhibit No. 5, p. 30). He was seen on May 2, 2024. He had no complaint of cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds. The assessment was hypertension, chronic obstructive lung disease, degeneration of intervertebral disc, edema of the lower extremity, mixed hyperlipidemia, atrial fibrillation and overweight.

(Respondent's Exhibit No. 5, pp. 23). EKG was performed on June 23, 2024. Same revealed ventricular-paced rhythm with premature ventricular or aberrantly conducted complexes. Biventricular pacemaker was detected. (Respondent's Exhibit No. 5, pp. 12-16). Chest x-ray performed on June 23, 2024, was interpreted as revealing old calcified granulomatous disease otherwise the lungs were clear. The biventricular pacemaker/internal cardiac defibrillator was noted. The history regarding this chest x-ray was syncope. (Respondent's Exhibit No. 5, p. 18). CT angiogram was performed on June 23, 2024. Findings were no large vessel occlusion or significant stenosis. No aneurysm or high flow vascular lesion identified. Dominant right vertebral artery and developmentally diminutive left vertebral artery. Grossly patent dural veinous sinuses. No large vessel occlusion. (Respondent's Exhibit No. 5, p. 12). Echocardiogram was performed June 24, 2024. No gross thrombus could be seen but small thrombi cannot be excluded due to technical limitations and acoustic shadowing as a result of the prosthetic valve. (Respondent's Exhibit No. 5, p. 13). Chest x-ray performed June 24, 2024, was interpreted as revealing multiple calcified granulomas, no acute radiographic abnormality. (Respondent's Exhibit No. 5, p. 9). EEG performed June 25, 2024, was noted to be a normal study in the wake end of sleep state. In the report it was charted that the Petitioner was a 70-year-old male with sudden onset dizziness/syncope. (Respondent's Exhibit No. 5, p. 8). Chest x-ray performed June 25, 2024, revealed equivocal mild ground-glass opacities of the right upper lobe possibly secondary to normal overlying chest wall, mild pneumonia, pneumonitis, atelectasis or pulmonary edema could not be excluded. (Respondent's Exhibit No. 5, p. 7).

Petitioner was seen on August 1, 2024. He related no cough, wheeze or shortness of breath. Physical examination of the chest revealed no dyspnea with expiatory wheezing. The assessment was hypertension, hyperlipidemia, COPD, edema of lower extremity, and degeneration of intervertebral disk. (Respondent’s Exhibit No. 9, pp. 62-67). On February 18, 2025, the Petitioner underwent chest x-ray because of increased oxygen demand. It was interpreted as revealing possible small left pleural effusion and continued bilateral lower lobe patchy airspace changes that may represent pneumonia. (Respondent’s Exhibit No. 9, p. 56).

On March 26, 2025, Petitioner was seen for hospital follow-up. His oxygen saturation was noted to be 91% on 2 liters of oxygen. He reported no cough, wheezing, or shortness of breath. (Respondent’s Exhibit No. 9, pp. 36-40). On April 14, 2025, the Petitioner underwent biventricular ICD replacement. (Respondent’s Exhibit No. 9, pp. 28-29). On April 17, 2025, the Petitioner undergoes CT of the chest with the indication being shortness of breath. The study was interpreted as revealing small right and moderate left pleural effusions, prominent atelectasis of the left upper and left lower lobe, septal thickening and minor tree-in-bud nodular opacities of the right upper lobe. It was felt this was possibly a consequence of pneumonitis and edema. The patchy opacities in the right lower lobe were also suspicious for pneumonia. On April 18, 2025, the Petitioner undergoes chest x-ray with the indication for same being chest pain. This was interpreted as revealing persistent and increased left pleural fluid, consolidative change of the adjacent left base, and infiltrate of the right upper lobe. (Respondent’s Exhibit No. 9, p. 27). Petitioner was seen on April 23, 2025. He denied cough or shortness of breath. Physical examination of the chest revealed no dyspnea or adventitious sounds. (Respondent’s Exhibit No. 9, pp. 21-26).

Petitioner was seen on May 23, 2025. He denied cough or shortness of breath. Physical examination of the chest revealed no dyspnea or adventitious sounds. (Respondent’s Exhibit No. 9, pp. 8-13). He was seen on May 27, 2025, for follow-up on COPD. He reported no cough or

shortness of breath. Physical examination of the chest revealed no dyspnea or adventitious sounds. (Respondent's Exhibit No. 9, pp. 2-7).

Medical records of Prairie Cardiovascular were admitted into evidence. Petitioner was seen on February 28, 2016, for heart failure. Review of systems respiratory was positive for cough, orthopnea, and shortness of breath. He underwent chest x-ray which revealed mild cardiomegaly with increased pulmonary vascularity; interstitial opacities within the lungs which may represent mild interstial edema versus infection; mild bibasilar airspace opacities; and postoperative changes of the chest. (Respondent's Exhibit No. 6, pp. 13-20). He was seen on June 27, 2016, for fatigue. Review of systems respiratory was positive for dry cough and shortness of breath. (Respondent's Exhibit No. 6, p. 5-10). Petitioner was seen on August 12, 2016. He reported significant dyspnea on exertion. Impression was cardiomyopathy, chronic systolic congestive heart failure, dyspnea on exertion, rheumatic mitral valve disease, status post Bi-V ICD implantation, atrial fibrillation, and hypertension. (Respondent's Exhibit No. 6, pp. 2-3).

Records of NIOSH were admitted into evidence. Petitioner's x-ray dated August 5, 2011, was interpreted by an A-reader as being completely negative for any parenchymal abnormalities consistent with pneumoconiosis and film quality 1. (Respondent's Exhibit No. 7, p. 4). The x-ray was also interpreted by a B-reader, who also found it negative for any parenchymal abnormalities consistent with pneumoconiosis and film quality 2. (Respondent's Exhibit No. 4, p. 6).

Disability Determination and Transmittal records from Social Security were admitted into evidence indicating Petitioner was approved for disability benefits based on a primary diagnosis of chronic heart failure with insufficient evidence to establish a secondary diagnosis. Same shows the establishment of disability date as October 21, 2016. (Respondent's Exhibit No. 8, p. 1).

CONCLUSIONS OF LAW

Issue (o): Is Petitioner's claim for occupational disease other than coal workers' pneumoconiosis barred by Section 6 (c) of the Occupational Diseases Act?

Section (c) of the Occupational Diseases Act provides in part:

> . . . In any case other than injury or death caused by exposure to radiological materials or equipment or asbestos, unless application for compensation is filed with the Commission within 3 years after the date of the disablement, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred. . . .
>
> Effective July 1, 1973, in cases of disability caused by coal miners pneumoconiosis unless application for compensation is filed with the Commission within 5 years after the employee was last exposed where no compensation has been paid, or within 5 years after the last payment of compensation where any has been paid, the right to file such applications shall be barred. . . . 820 ILCS 310/6(c)

The Arbitrator concludes that Petitioner's claim for benefits related to any occupational disease other than coal workers' pneumoconiosis is barred by Section 6(c) of the Occupational Diseases Act.

In support of this conclusion the Arbitrator notes the following:

Petitioner was last exposed to the hazards of an occupational disease in the course of his employment on October 21, 2016. Petitioner's Application for Adjustment of Claim was filed on March 1, 2021. Section 6(c) of the Occupational Diseases Act provides a claim should be filed within three years in respect to a condition other than coal workers' pneumoconiosis (where no compensation has been paid) or 5 years in respect to coal workers' pneumoconiosis (where no compensation has been paid). This case is analogous to *Carter v. Illinois Workers' Compensation Commission, 2014 IL App(5th)* 130151 WC ¶20. The only occupational disease at issue in the *Carter* case was coal workers' pneumoconiosis as any other claim for alleged occupational disease was barred by Section 6(c) of the Occupational Diseases Act.

Accordingly, the only potential occupational disease at issue in the instant case is coal workers' pneumoconiosis.

Issue (c): Did an occupational disease occur in the form of coal workers' pneumoconiosis that arose out of and in the course of Petitioner's employment with Respondent?

Issue (f): Is Petitioner's current condition of wellbeing causally related to his occupational exposure?

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease in the form of coal workers' pneumoconiosis arising out of and in the course of his employment and that his current condition is causally related to an occupational exposure.

In support of these conclusions the Arbitrator notes the following:

Both Dr. Meyer and Dr. Rosenberg testified that pathology is the gold standard for diagnosing coal workers' pneumoconiosis. Dr. Rosenberg further emphasized that absent pathology, a diagnosis must be supported by imaging and cannot rest on symptoms or spirometry. There is no evidence in the record disputing this point. Because there is no pathology in this case, the outcome turns on the credibility of the competing interpretations of Petitioner's imaging studies.

Dr. Cristopher Meyer, a board-certified radiologist and long-time B-reader, reviewed Petitioner's chest radiograph from October 22, 2018, and a CT scan from April 12, 2017. He testified that the 2018 x-ray was negative for coal workers' pneumoconiosis, showing only hyperinflation of the lungs and scattered calcified granulomas. On the CT scan, he observed mild apical paraseptal emphysema, airway-centric nodules, ground-glass opacity, and healed granulomatous disease, as well as changes attributable to Petitioner's prior open-heart surgery. He

found no small opacities, no conglomerate fibrosis, and no radiographic evidence of coal workers' pneumoconiosis. Dr. Meyer concluded, within a reasonable degree of medical certainty, that the imaging demonstrated non-occupational findings and did not support a diagnosis of coal workers' pneumoconiosis.

Dr. David Rosenberg, a board-certified pulmonologist, occupational medicine specialist, and B-reader, reviewed Petitioner's chest x-ray from October 22, 2018, and CT scan from April 12, 2017. He testified that the x-ray showed clear lung fields without interstitial nodularity, with a profusion rating of 0/0. He noted only scattered granulomatous changes and evidence of prior cardiac surgery, with no findings consistent with coal workers' pneumoconiosis. On the CT scan, he again found no evidence of pneumoconiosis and testified that CT imaging is more diagnostic for interstitial lung disease than plain films. He concluded, within a reasonable degree of medical certainty, that Petitioner does not have coal workers' pneumoconiosis.

By contrast, Petitioner was examined once by Dr. Suhail Istanbouly, who diagnosed simple coal workers' pneumoconiosis caused by coal dust exposure. His opinion, however, relied heavily on Dr. Robert Cohen's B-reading of an October 22, 2018, chest x-ray. Dr. Istanbouly did not personally review any imaging studies, despite admitting it was his preference to do so. The Arbitrator assigns less weight to his conclusions because they were based primarily on a single outside x-ray report without his own review of imaging, and Petitioner's oral history without corroboration from treatment records.

Dr. Cohen, a B-reader, interpreted the October 22, 2018, chest x-ray as positive for simple pneumoconiosis with profusion 1/0. Dr. Cohen did not testify, and his interpretation is directly contradicted by the testimony of two other highly credentialed B-readers who personally reviewed the same and additional imaging studies.

Petitioner testified that he worked five years in coal mining driving a truck for Respondent. Dr. Istanbouly testified that it is the consensus that it takes a minimum of 15 years to develop coal workers' pneumoconiosis. Peititoner's exposure to coal dust was approximately one-third of the minimum exposure necessary to develop coal workers' pneumoconiosis.

Given the absence of pathology and the persuasive testimony of Drs. Meyer and Rosenberg, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he suffers from coal workers' pneumoconiosis arising out of and in the course of his employment, or that his current condition of ill-being is causally related to occupational exposure.

The Arbitrator notes the testimony that a negative chest x-ray would not rule out that Petitioner could have coal workers' pneumoconiosis pathologically. The Arbitrator finds that such testimony is not the same as saying that Petitioner in fact suffers from the disease. *Woolard v. The American Coal Company*, IWCC 0154, p. 17. It is not Respondent's duty to produce evidence that Petitioner does not have coal workers' pneumoconiosis. Rather the issue is whether the Petitioner has proven that he does. *Quinn v. The American Coal Company*, 20 IWCC 0326.

To the extent Petitioner seeks compensation for diagnoses of chronic bronchitis or chronic obstructive pulmonary disease (COPD), those claims are time-barred under Section 6(c). Even if the claims were timely, the greater weight of the medical evidence establishes that Petitioner's respiratory impairments are not related to coal mine dust exposure.

Dr. Rosenberg testified that Petitioner's obstructive findings were classic for smoking-related reduction of FEV1 and that there is no scientific basis for attributing any bronchitis in this case to coal mine dust exposure. He further explained that chronic bronchitis dissipates within months after exposure ceases, and that Petitioner's residual symptoms were more consistent with congestive heart failure. Similarly, Dr. Meyer reviewed Petitioner's imaging and identified findings consistent with emphysema, infection, aspiration, healed granulomatous disease, and surgical sequelae, none of which are occupational in nature.

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

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

The Arbitrator concludes that Petitioner failed to prove by a preponderance of the evidence that he suffered a timely disablement as described in Sections 1(e) and (f) of the Occupational Diseases Act. In support of this conclusion, the Arbitrator notes the following:

Section 1(e) of the Occupational Diseases Act states as follows:

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

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

The evidence shows that Petitioner last worked at American Coal in October 2016 when he was laid off with other miners. He testified that he would have returned to his next scheduled shift but for the layoff. In November 2016, he applied for Social Security Disability benefits. Those benefits were awarded in January 2017 on the basis of chronic heart failure, not pneumoconiosis

or any lung disease. The Social Security records list chronic cardiac impairment as the disabling condition and expressly noted insufficient evidence to establish a secondary diagnosis. The timing and basis of that award underscore that Petitioner left the workforce for non-occupational reasons.

There is no evidence in the record that any treating physician ever restricted Petitioner from coal mine work on account of pneumoconiosis or any other dust-related disease. To the contrary, Petitioner told Dr. Istanbouly in 2018 that he had quit working due to health problems related to his heart rather than respiratory impairment.

Given the Arbitrator's finding above that Petitioner's claim for any occupational disease other than coal worker's pneumoconiosis is barred, only disablement related to the Petitioner's alleged coal workers' pneumoconiosis is considered in determining whether the Petitioner has proven a timely disablement. Taken together, the evidence demonstrates that Petitioner did not suffer disablement from coal workers' pneumoconiosis within two years of his last exposure in October 2016. His loss of employment resulted from a layoff, and his Social Security Disability award was based on chronic cardiac disease. The medical records, imaging studies, and expert testimony fail to establish disablement attributable to pneumoconiosis during the statutory period. Accordingly, the Arbitrator finds that Petitioner has failed to prove timely disablement within the meaning of Sections 1(e) and 1(f) of the Occupational Diseases Act.

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

Petitioner's claim for benefits is denied.