

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC029402
Case Name	Maria Guadalupe Navarro v. Labor Personnel, LLC.-Loaning employer
Consolidated Cases	23WC033832
Proceeding Type	Petition for Review
Decision Type	Corrected Commission Decision
Commission Decision Number	26IWCC0259
Number of Pages of Decision	27
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	Tina DiBenedetto

DATE FILED: 9/24/2026

/s/Maria Portela, 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 <u>down</u>	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA GUADALUPE NAVARRO,

Petitioner,

vs.

NO: 23WC029402
 26IWCC0259

LABOR PERSONNEL; FACTOR 75,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, penalties and fees, and "Rejection of Addendum Report," and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator as stated below and otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

Initially, the Commission finds that Dr. Balaram's addendum report, dated January 10, 2025, should have been admitted into evidence. To comply with Section 12 of the Act, a physician's report must be provided to the opposing party "not later than 48 hours before the time the case is set for hearing." 820 ILCS 305/12; See also *Ghere v. IC* (Howell Asphalt), 278 Ill. App. 3d 840, 845, 215 Ill. Dec. 532, 536, 663 N.E.2d 1046, 1050 (1996). The appellate court has clarified that §12 "dictates that the proponent of medical testimony provide the other party with the required medical reports 48 hours before evidence is presented on the first day of the arbitration hearing." *Mulligan v. IWCC*, 408 Ill. App. 3d 205, 219, 349 Ill. Dec. 227, 239, 946 N.E.2d 421, 433 (2011).

In the case at bar, although February 26, 2025 had been the date "set for hearing," no substantive evidence was heard on that date. *Px46*. Rather, the transcript reflects that an on the record discussion was had regarding whether a continuance should be granted because Respondent wanted to take the deposition of its §12 physician, Dr. Balaram, with respect to the addendum report, and Respondent also wanted to subpoena wage records from Petitioner's subsequent employers "to get accurate records of earnings for calculation of temporary, partial, and/or wage differential." *Id. at 3-*

4, *T.1248-9*. The Arbitrator granted the continuance and stated, “I’m not going to make somebody have a trial if they’re not ready to go.” *Id. at 4*. Therefore, it does not seem as though the Arbitrator believed the trial/hearing had begun that day.

The only “argument” presented on February 26, 2025 was that Petitioner had a *Ghere* objection to Dr. Balam’s addendum report because he had not received it until the day prior on February 25, 2025. *Id. at 5*. Although Petitioner may have had a valid *Ghere* objection had the trial proceeded that day, it did not. Instead, the trial was continued to March 11, 2025. The Arbitrator also indicated that if the case didn’t proceed on that date, it would be tried “at the latest in April.” *Id. at 4*.

The Commission finds that the hearing did not begin on February 26, 2025. Rather, a record was made regarding the reasons for a continuance. No arguments were made about the substantive issues in this case and no evidence was presented. Therefore, pursuant to the rationale in *Mulligan*, the hearing had not actually begun and Respondent’s tender of Dr. Balam’s addendum report to Petitioner’s attorney on February 25, 2025 did not violate the 48-hour rule in §12 of the Act. We note that, although Petitioner’s attorney objected to the report based on *Ghere*, he waived any hearsay or foundation objections. *T.97*. Thus, Dr. Balam’s addendum should have been admitted into evidence.

Despite our consideration of Dr. Balam’s addendum report and the opinions contained therein, we affirm the Arbitrator’s findings regarding causation and temporary total disability (TTD). Regarding temporary partial disability (TPD), we affirm the award but correct the Order section at #2 to strike the word “total” and replace with “partial.” We also strike “9/16/23 – 1/8/24” to be consistent with the Arbitrator’s Conclusions of Law on page 13 because Petitioner did not introduce any evidence for that period. This correction does not affect the amount of the TPD award.

Regarding medical expenses, the Commission notes that the Arbitrator awarded \$78,185.23, as shown in *Px38* and which was already adjusted based on Petitioner’s calculations of the medical fee schedule in §8.2 of the Act. However, this amount includes charges from both of Petitioner’s consolidated cases: 23WC029402 and 23WC033832. It also appears that this summary includes some charges which, according to the medical bill exhibits, had already been paid by Respondent. *Px38* also does not separate between medical expenses related to the right shoulder accident on September 15, 2023, which is the subject of the current Corrected Decision, from those related to her lumbar injury on December 13, 2023, which is the subject of the Corrected Decision in case number 23WC033832. We find that Petitioner is entitled to all medical expenses contained in the exhibits related to her right shoulder, adjusted pursuant to the fee schedule in §8.2 of the Act, with Respondent receiving credit for amounts paid prior to the hearing. Petitioner shall not receive double payment for any medical bills.

Next, we affirm the Arbitrator’s findings and wage differential award under §8(d)1 beginning October 26, 2024, but correct a clerical error in the Order section at #4 to strike the number “65” and replace with “67” to be consistent with the Arbitrator’s findings in the Conclusions of Law section on page 15. We clarify that §8(d)1 of the Act provides that for accidents occurring on or after September 1, 2011, a wage differential is awarded until the age of 67 or 5 years from the date the award becomes final, which is later.

Regarding penalties and attorney’s fees, we affirm the award of \$9,420.00 in §19(l) penalties. However, we modify the awards under §19(k) and §16. We find that Respondent’s conduct and

failure to pay the medical bills was unreasonable and vexatious under both of these sections, and award §19(k) penalties equal to 50% of the amount of unpaid medical expenses relating to the right shoulder, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts paid by Respondent prior to the hearing. Similarly, we award §16 attorney's fees equal to 20% of the amount of unpaid medical expenses relating to the right shoulder, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts paid by Respondent prior to the hearing.

We also modify the Arbitrator's awards under §19(k) and §16 for Respondent's unreasonable and vexatious nonpayment of TPD benefits. The Commission finds that Respondent did have a reasonable basis to dispute Petitioner's entitlement to TTD/TPD after August 30, 2024, when Dr. Poepping initially released Petitioner from care with no restrictions. This release date seems consistent with the June 21, 2024 (report date) §12 opinion of Dr. Balaram that Petitioner should continue with physical therapy for six (6) weeks "with a transition to unrestricted duty thereafter, MMI expected in 2 months." *Px24, T.1079*. Although Petitioner continued to work at her accommodated, light duty job, Respondent's attorney emailed Petitioner's attorney on October 21, 2024 that Petitioner's work assignment was being "ended based on Dr. Balaram's IME report." *Px26, T.1085*. As the Arbitrator determined, after deducting Respondent's credit for overpayment of TTD, the remaining balance of unpaid TPD is \$1,868.52. However, the TPD period awarded by the Arbitrator also included 6-6/7 weeks from September 4, 2024 through October 21, 2024. This period is after the August 30, 2024 initial release date by Dr. Poepping, which Respondent claims it is relying upon in denying additional TTD/TPD.

The Commission agrees with the Arbitrator that Petitioner is entitled to the TTD/TPD periods he awarded and that Petitioner's permanent restrictions make her eligible for a wage differential. However, as it relates to penalties, Respondent obtained the opinion and testimony of Joe Castronovo, PT, DPT, MTC, that the October 15, 2024 Functional Capacity Assessment (FCA), showing Petitioner had restrictions, was not valid. Respondent also obtained the January 10, 2025 records-review addendum from Dr. Balaram which, as discussed previously, the Commission has found should have been admitted into evidence. Dr. Balaram opined that the FCA was not valid because it was based on Petitioner's comorbidities and not Petitioner's shoulder specifically. Although the Commission does not find Mr. Castronovo's or Dr. Balaram's opinions persuasive, we do believe it was not unreasonable or vexatious for Respondent to have relied upon them to support its position that Petitioner was not entitled to TTD and TPD benefits after the August 30, 2024 release by Dr. Poepping.

We next calculate the amount of unpaid TPD benefits and associated penalties/fees. Respondent argues it "fully paid TTD through August 30, 2024 in the amount of \$13,516.91 and is...entitled to an additional credit towards any awarded PPD for overpayment of TTD paid after August 30, 2024 for [sic] \$1,639.28." *29402 R-brief at 9*. However, even though Respondent had a reasonable basis to not pay TTD/TPD after August 30, 2024, Petitioner had been working from June 5, 2024 through (and after) August 30, 2024 at the Aurora Food Pantry, which was an accommodated job provided by Respondent. Respondent is clearly responsible for TPD during this period, but Respondent's brief does not address Petitioner's entitlement to TPD.

Respondent agrees with the Arbitrator's calculation that it overpaid TTD by \$1,639.28 so we must determine how much, if any, Respondent unreasonably and vexatiously failed to pay for undisputed TPD benefits through August 30, 2024. The Arbitrator appropriately calculated Petitioner's TPD benefits based on a cumulative total of her gross earnings (from 6/5/24 – 8/29/24 and 9/4/24 – 10/21/24) compared to what Petitioner would have earned during those periods at her

previous job at Respondent. *Px33*. The Arbitrator concluded that Petitioner was entitled to \$3,507.80 in TPD benefits for 19 weeks. *29402 Dec. at 13*. Although the Arbitrator did not convert that to a weekly TPD rate, the average TPD rate during those periods equals \$184.62 (\$3,507.80 / 19 weeks).

For the period from June 5, 2024 through August 29, 2024, which is the first period of TPD the Arbitrator awarded, Petitioner was entitled to \$2,268.19 in TPD benefits (\$184.62 per week x 12-2/7 weeks). After deducting Respondent's \$1,639.28 credit for the overpayment of TTD, there remains a balance of unpaid TPD of \$628.91. Based on Respondent's own admissions and arguments, it owed this amount of TPD through August 29, 2024, which remained unpaid through the date of hearing. Therefore, for the unpaid TPD through August 29, 2024, we find Petitioner is entitled to §19(k) penalties of \$314.46 (\$628.91 x 50%) and §16 fees of \$125.78 (\$628.91 x 20%).

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$561.78 per week for a period of 21-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$3,507.80 for the period of temporary partial disability under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive credit of \$13,516.91 for temporary total disability and temporary partial disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, pursuant to §8(d)1 of the Act, \$14,062.00 in accrued wage differential benefits from October 26, 2024 through the date of arbitration on September 23, 2025. Beginning September 24, 2025, Respondent shall pay to Petitioner wage differential benefits of \$261.85 until the date she reaches the age of 67.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, under §8(a) of the Act, all medical expenses contained in the exhibits related to her right shoulder, adjusted pursuant to the fee schedule in §8.2 of the Act, with Respondent receiving credit for amounts paid prior to the hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$9,420.00 for penalties as provided in §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$314.46 in penalties for unpaid temporary partial disability benefits as provided in §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as penalties under §19(k) of the Act, an amount equal to 50% of the unpaid medical expenses relating to the right shoulder, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts Respondent paid prior to the hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of 125.78 in attorney's fees for unpaid temporary partial disability benefits as provided in §16 of

the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as attorney's fees under §16 of the Act, an amount equal to 20% of the unpaid medical expenses relating to the right shoulder, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts Respondent paid prior to the hearing.

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

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

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

SEPTEMBER 24 2026

/s/ Maria E. Portela

SE/

/s/ Marc Parker

O: 7/23/26

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/s/ Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC029402
Case Name	Maria Guadalupe Navarro v. Labor Personnel, LLC.-Loaning employer
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Daniel J Levato

DATE FILED: 11/18/2025

/s/ Paul Seal, Arbitrator

 Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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
 CORRECTED ARBITRATION DECISION**

Maria Guadalupe Navarro

Employee/Petitioner

v.

LABOR PERSONNEL; FACTOR 75;

Employers/Respondents

Case # **23** WC **29402**

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 **Arbitrator Paul Seal**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **9/23/25**. 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 **Admission of the addendum report**

FINDINGS

On **9/15/23**, 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 **\$42,976.16**; the average weekly wage was **\$842.67**.

On the date of accident, Petitioner was **44** 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 **\$13,516.91** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$13,516.91**.

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

ORDER

1. Respondent shall pay Petitioner temporary total disability benefits of **\$561.78/week** commencing 1/9/24 – 6/4/24 and 10/22/24– 10/25/24 for a total of for **21 & 1/7th** weeks for a total of \$11,877.63. Taking into account a credit of \$13,516.91 for TTD paid, the Arbitrator notes a TTD overpayment of \$1,639.28.
2. Respondent shall pay Petitioner temporary total disability benefits amounting to \$3,507.80 for the weeks of 9/16/23 – 1/8/24; 6/5/24 – 8/29/24 and 9/4/24 – 10/21/24. After taking into account the TTD overpayment of \$1,639.28, Petitioner is awarded \$1,868.52 in TPD benefits.
3. Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$78,185.23, as provided in Sections 8(a) and 8.2 of the Act and submitted into evidence as PX 7 through PX 19.
4. Pursuant to Section 8(d)1 Respondent shall pay Petitioner wage differential benefits starting on 10/26/24. Through the date of arbitration, Petitioner is awarded \$14,062.00 in accrued wage differential benefits through the date of arbitration. Moving forward, Pursuant to Section 8(d)1, the Arbitrator also awards Petitioner a wage differential of \$261.85 until the date she reaches the age of 65.
5. Respondent shall pay to Petitioner penalties of **\$16,009.86**, as provided in Section 16 of the Act; **\$40,956.69**, as provided in Section 19(k) of the Act; and **\$9,420.00**, as provided in Section 19(l) of the Act.

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

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



Signature of Arbitrator

NOVEMBER 18 2025

FINDINGS OF FACT

Proofs were closed on 9/23/25 in Wheaton, Illinois, before Arbitrator Paul Seal. Issues in dispute at arbitration were admission of exhibits, causal connection, medical expenses, TTD, TPD, Penalties and attorney's fees, and permanency.

As of 9/15/23, Petitioner had been employed by Respondent, a staffing agency, for approximately 3.5 years (T. at 24). Throughout her employment, Respondent sent Petitioner to work at Factor 75 as a general laborer (T. at 24). In order to complete her work duties, Petitioner engaged in the lifting of objects weighing from 10-100 pounds (T. at 24). Petitioner had no prior history of injury to her right shoulder or lumbar spine (T. at 25). Throughout her employment, she worked 6 days per week and was able to complete her work duties without issue.

On 9/15/23, Petitioner reported to work in the same state of sound health (T. at 26). That day, at approximately 7 AM, Petitioner walked towards the restroom, slipped on liquid, landed on her right hand and felt a pop in her right shoulder (T. at 26). Petitioner immediately reported the incident to a representative from the staffing agency and was sent for care at Advocate Occupational Health that same day.

The initial treatment notes from Advocate Occupational Health document that Petitioner slipped on a wet patch as her coworker cleaned the floor (PX 1 at 9). Petitioner underwent x rays of the right shoulder and right elbow (PX 1 at 15-16). She was initially diagnosed with a sprain of the right shoulder and sent back to work with restrictions (PX 1 at 10). Petitioner continued working for Respondent while also following up at Advocate Occupational Health up through 10/23/23 (T. at 28). Due to the lack of improvement, Petitioner sought a second opinion at Grandview Health Partners on 11/2/23 where she reported ongoing cervical, right shoulder, right elbow and right wrist pain due to the 9/15/23 work accident (PX 2A at 3). Petitioner was prescribed PT, asked to undergo an MRI of the right shoulder, and again sent back to work with restrictions (PX 2A at 10-2). The 11/11/23 right shoulder MRI demonstrated a focal full thickness rotator cuff tear (PX 2A at 402). Petitioner was then referred to Dr. Poepping who ordered surgery to address the rotator cuff tear (PX 3 at 3). Pending surgery, Dr. Poepping recommended that Petitioner continue working with restrictions. Petitioner testified that she continued performing her normal work duties with the use of her left, uninjured, arm (T. at 29).

On 12/13/23, while still working with restrictions for Respondent, Petitioner sustained a second work accident. On this date, Petitioner was pushing racks of condiments when she slipped on ice and landed flat on her back (T. at 30). Petitioner noted immediate pain in her back and right shoulder (T. at 31). That same day, she followed up at Grandview Health Partners to whom she reported slipping on ice and landing onto her right hip thus resulting in lumbar/hip/abdomen pain (PX 2B at 3). Dr. Gavin ordered a CT scan of the abdomen, a lumbar MRI, an MRI of the right hip and, again, sent her back to work with restrictions (PX 2B at 79). Radiologist, Dr. Kuritza, read the 12/21/23 lumbar MRI scan to show a 2-3 mm posterior disk protrusion at L4/5 indenting the thecal sac with generalized bilateral neuroforaminal narrowing and a 4-5 mm posterior disk protrusion at L5/S1 indenting the thecal sac with generalized bilateral neuroforaminal narrowing (PX 2A at 410). Petitioner was then instructed to follow up with pain management for the lumbar injury.

On 12/27/23, Liza Perez, Respondent's claims adjuster, emailed Lakeshore Surgery Center to advise that the proposed surgery was authorized (PX 22). Petitioner continued working with restrictions until 1/8/24, the date prior to the approved surgery (T. at 32). On 1/9/24, Dr. Poepping performed the approved right shoulder arthroscopic rotator cuff repair, subacromial decompression, debridement and open tenodesis at Lakeshore Surgery Center (PX 3 at 4). Post surgery, on 1/12/23, Dr. Poepping instructed Petitioner to remain off work and commence PT (PX 3 at 9).

During a lumbar examination on 2/6/24, Dr. Gavin documented improved low back pain with an ongoing burning sensation from her low back down Petitioner's bilateral posterior thighs and into her knees (PX 2B at 34). On 3/8/24, Petitioner was seen by Dr. Anis Mekhail to address the ongoing lumbar pain (PX 4 at 3). During the initial date of service, Dr. Mekhail documented ongoing low back pain with radiation down the bilateral lower extremities as a result of the 12/13/23 work accident (PX 4 at 3). Dr. Mekhail reviewed the MRI scan and diagnosed herniated discs at L4/5 and L5/S1; he recommended cortisone injections to address the lumbar radiculopathy (PX 4 at 3-4). On 3/15/24, Dr. Poepping kept Petitioner off work and recommended a shoulder strengthening program.

On 4/12/24, at Dr. Mekhail's recommendation, Petitioner was seen at the Pain and Spine Institute at which time Petitioner reported 8/10 low back pain traveling down the right leg (T. at 32 and PX 5 at 4). Petitioner was diagnosed with lumbar radiculopathy and prescribed right

transforaminal steroid injections from L4 to S1 which she underwent with Dr. Patel on 5/6/24 (PX 5 at 5 & 7). Subsequent to the injection, on 5/21/24, Petitioner reported to Dr. Patel that she was 100% better and was thereby discharged without restrictions for the lumbar injury (PX 5 at 10). On 5/24/24, Dr. Poepping recommended ongoing therapy while allowing Petitioner to return to work with 5-pound lifting restrictions (PX 3 at 13 & 60).

Respondent then provided Petitioner with a temporary alternative light duty assignment working at the Aurora Food Pantry starting on 6/5/24 (PT. at 35 and PX 23). At Respondent's request, on 6/11/24, Petitioner underwent a Section 12 examination with Dr. Ajay Balaram (PX 24). Dr. Balaram determined there was no evidence of symptom magnification; diagnosed Petitioner as being 5 months post right shoulder arthroscopic rotator cuff repair/subpectoral biceps tenodesis. Respondent's expert opined Petitioner had undergone appropriate surgical intervention and recommended 6 more weeks of physical therapy 2-3 times per week (PX 24). Moving forward, Dr. Balaram agreed with the work restrictions imposed by Dr. Poepping and agreed that Petitioner's need for work restrictions was causally related to the work accident (PX 24). Dr. Balaram further opined Petitioner would be at MMI in 8 weeks from the IME exam (PX 24).

On 7/17/24, Petitioner's counsel emailed Respondent's counsel requesting confirmation of the average weekly wage, an overview of the TTD paid to date and also requested ongoing payment of TPD benefits starting on 6/5/24 (PX 25). On 7/19/25, Dr. Poepping documented Petitioner had slight improvement but still had ongoing difficulty with overhead activity (PX 3 at 15). In light of these symptoms, Dr. Poepping recommended that Petitioner complete her scheduled PT and move forward with an FCE (PX 3 at 15). Petitioner followed up with Dr. Poepping on 8/30/24 without having undergone the recommended FCE. Petitioner testified that despite her symptoms, she asked that Dr. Poepping release her back to work without restrictions because she was earning less money and wanted to get back to work full time so that she could earn her full wages (T. at 38-39). Dr. Poepping's dictation from 8/30/24 documents that Petitioner felt she could work her normal activities; thus, she was discharged from care and told to follow up as needed (PX 3 at 16).

Upon reporting back to work at full duty at the Aurora Food Pantry, Petitioner noted increased back/shoulder pain and further noted that she was not able to lift objects above her head (T. at 40). In light of the symptoms, just 5 days later, Petitioner saw Dr. Poepping again on

9/4/24 at which time he documented that Petitioner was having difficulty with regular work activities (PX 3 at 17). Dr Poepping again recommended a functional capacity evaluation and sent her back to work with restrictions (PX 3 at 17).

Petitioner underwent a valid FCA at ATI Physical Therapy on 10/15/24 which found her capable of lifting 14.8 pounds occasionally above the shoulder, 28 pounds occasionally from desk to chair; 25.8 pounds occasionally from chair to floor (PX 6 at 5). Petitioner returned back to work at the Aurora Food Pantry pending her follow-up with Dr. Poepping to review the FCA (T. at 41). On Monday, 10/21/24, while at the food pantry, Petitioner received notice from her supervisor that her work assignment at the food pantry had ended (T. at 43). That same morning, at 10:02 AM, Respondent's counsel emailed Petitioner's counsel advising that the work assignment had ended and that Petitioner should return home (PX 26). Petitioner's counsel responded and requested payment of TTD benefits. Despite being told that she would not be paid for her services, Petitioner asked the supervisor for permission to complete the shift. Petitioner testified she completed her shift that day, without pay, because she knew the food pantry needed the help (T. at 44).

On 10/25/24, Dr. Poepping saw Petitioner for the last time. On this date, Dr. Poepping reviewed the valid FCE and discharged Petitioner based upon the FCE recommendations (PX 3 at 18). That same day, Petitioner personally requested light duty work from Respondent but was not provided a job offer (T. at 44). On 10/25/24 at 12:39 PM, Petitioner's counsel emailed Respondent requesting light duty work (PX 26). In light of Respondent's refusal to provide light duty work, Petitioner immediately sought alternative employment while keeping a job diary of each employer she contacted (PX 31). From 10/25/24 through 11/14/24, Petitioner contacted 16 potential employers (See PX 31). Eventually, she found work with Aurora Fresh market working approximately 30 hours per week at \$16.00 per hour (T. at 47).

On 11/14/24, Petitioner's counsel sent an email to Respondent's counsel demanding payment of \$199,260.13 in unpaid medical bills stating, "This seems like a significant amount of unpaid bills for an approved surgery. Is there a reason why the adjuster is not paying the bill (PX 27)?" Included within the unpaid medical forwarded to Respondent were the pre-fee schedule balances with Lakeshore Open MRI (\$7,960.91); G&T Orthopaedics (\$32,540.00); Western Touhy Anesthesia (\$908.14); Lakeshore DME (\$13,000.00); and Lakeshore Surgery Center (\$88,120.51) (PX 27).

Petitioner continued looking and eventually found alternative employment with Unistaff. Petitioner testified that she continued her job search, despite already securing employment, because she wanted to work more hours and earn more money (T. at 47 & 49). The wage records submitted into evidence demonstrate Petitioner earned a total of \$1,250.48 with Aurora Fresh Market from 11/11/24 through 12/8/24 (PX 34).

Petitioner began working with Unistaff, a staffing agency, on 12/9/24 and was initially sent to work at a used book warehouse for an employer named Sell Back Your Books (T. 49 & PX 35). Petitioner's work duties included picking orders which required lifting books from the floor up to above her head (T. at 50). Petitioner noted increased pain while performing the work duties. After approximately two months, on 2/5/25, Unistaff transferred Petitioner to work at MSI Express Packaging (T. at 51). Petitioner's work duties at MSI required that she stand at her workstation while repetitively packing condiments (T. at 53). Throughout her 8-hour shift, Petitioner repetitively lifted 6-pound boxes and stacked them onto a pallet while reaching above her head in height (T. at 54). Petitioner, again, described increased pain while performing the work duties at MSI. Petitioner testified that she had never felt this type of pain before, nevertheless, she kept working because she wanted to work and finish the job (T. at 54).

This matter was set for arbitration in Geneva on 2/26/25. One day prior to the scheduled hearing, on 2/25/25 at 11:38 AM, Respondent's counsel emailed Petitioner's counsel stating, "Sorry for the delay-had some stuff going on that I had to take care of" and then proceeded to provide copies of Respondent's exhibits which included the wage statement and TTD payment overview (which had previously been requested by Petitioner on 7/17/24) and a 1/10/25 IME addendum report by Dr. Balaram (See PX 25 & 39). At 11:51 AM, Petitioner's counsel responded, "**The addendum report was never provided to me. I am objecting to the report (PX 40).**" Upon reviewing the wage statement and the TTD overview, Petitioner's counsel responded at 1:15 PM acknowledging a TTD overpayment (\$1,6343.72) and, once the credit was taken into account, requested payment of \$1,864.08 in TPD benefits (PX 39 & PX 33).

The parties went on the record on 2/26/25. According to the transcript, Petitioner was ready to proceed on all issues. Respondent requested a continuance in order to schedule the deposition of the Section 12 expert (despite Petitioner's agreement to waive hearsay) and also to subpoena wage records from Petitioner's subsequent employers (PX 46 at 4). Over Petitioner's objection, the matter was continued until 3/11/25 (PX 46 at 4). Subsequent to going on the

record, Petitioner's counsel emailed respondent the following, "After taking into account the overpayment of TTD (\$1,643.72), it is undisputable that my client is still owed \$1,864.08 in TPD. If you disagree with this, I ask that you look at the file and provide a basis for said dispute. We ask that you forward \$1,864.08 to my office immediately (PX 39)." Respondent's counsel, via email, acknowledged receipt of the demand for payment of TPD on 2/26/25 at 12:15 PM (PX 41).

Respondent issued subpoenas to Unistaff and Aurora Fresh Market on 2/27/25 (RX 6 & 7). On Monday, 3/3/25, Unistaff forwarded a subpoena response for the requested wage records (RX 6). Petitioner continued working for Unistaff until Friday, 3/7/25 when she was abruptly advised the employer no longer needed her services (T. at 55). That same day, Petitioner's counsel advised Respondent that she had been terminated (PX 41). The wage records submitted into evidence demonstrate Petitioner earned a total of \$7,507.88 with Unistaff (PX 35 & PX 37). On 3/7/25, via email, the parties confirmed with the Arbitrator that Respondent still did not have a subpoena response from the employers and the matter was again continued for arbitration until 4/21/25 (See PX 41 & 42).

Upon losing her job with Unistaff, Petitioner started looking for work with another employer. From 3/11/25 through 4/3/25, Petitioner contacted 15 potential employers (RX 31). On 3/11/25, Petitioner spoke to Irma from Supermarket (Carneceria) El Paso and was told there was no work available (PX 31 and T. at 57). Despite being turned away, Petitioner followed up with Irma and secured employment with Super Market El Paso starting on 4/14/25 (T. at 58 & PX 36).

On Monday, 4/14/25, Petitioner's counsel emailed the arbitrator advising that Petitioner was ready to proceed to hearing. Subsequently, on 4/18/25, Petitioner's counsel emailed the arbitrator advising that Respondent had just provided an FCE review report the day prior (4/17/25) and that Petitioner was objecting to the report (PX 42). On 4/18/25, Petitioner's counsel emailed Respondent advising that hearsay would not be waived for the new FCE review report (PX 43). The parties spoke to the arbitrator via Webex again on 5/2/25. That same day, at 9:40 AM, Petitioner's counsel confirmed the pretrial conversation regarding Petitioner's objections to Respondent's reports (PX 44).

Petitioner filed a motion to request a hearing on 7/10/25 (PX 45). The arbitrator takes judicial notice that during the pretrial, on 7/17/25, Petitioner asked that the matter be set for

arbitration during the next month's cycle. Respondent's counsel requested additional time to schedule the deposition of Respondent's FCE review expert as they had not received responses to the request for deposition dates. In light of Respondent's assertions that the inquiries for deposition dates had been unsuccessful, the arbitrator gave Respondent an additional month and set this matter for arbitration on 9/23/25. The arbitrator did not give the parties an August date as requested by Petitioner (See T. at 14-15).

On 8/6/25, the parties proceeded with deposition Joe Castronovo, a licensed physical therapist hired by Respondent to review the ATI FCA report (RX 8). Mr. Castronovo testified that the FCA (functional capacity assessment) is similar to an FCE (functional capacity evaluation); however, each study uses a different criteria (RX 8 at 9). Mr. Castronovo noted ATI Physical therapy used the FCA program (RX 8 at 9). He opined, however, that the FCA is not a complete examination and lacks many components of a true FCE; thereby concluding the FCA is not a reliable measurement of someone's work ability as it lacks content validity, objective measurements and there's no scientific basis for the conclusions stated therein (RX 8 at 19). Despite the similarities between the FCE and the FCA, Mr. Castronovo acknowledged, on direct examination, that he was not certified to perform an FCA (RX 8 at 9).

Mr. Castronovo opined Petitioner's FCA provided no objective evidence that she provided a maximum effort during the exam (RX 8 at 32). Mr. Castronovo essentially questioned the reliability of every FCA performed by ATI Physical Therapy; concluding that Petitioner's FCA report should not be relied upon for future vocational planning due to the inherent fallacies of the FCA program utilized by ATI in administering all functional capacity assessments (RX 8 at 42). Respondent's expert further questioned the reliability of the FCA because it was administered by Tom Werner, an athletic trainer and not a licensed physical therapist (RX 8 at 17). According to Mr. Castronovo's review of the practice Acts, in the state of Illinois, Mr. Werner, as an athletic trainer, was not certified to perform an FCA (RX 8 at 17). Based upon his observations, Mr. Castronovo concluded Petitioner could return to her prior employment without restrictions (RX 8 at 42).

On cross examination, regarding his opinion that athletic trainers were not permitted to perform an FCA/FCE in the state of Illinois, Mr. Castronovo acknowledged he was not a lawyer and that he was not familiar with any specific case law, IWCC decision, or legal entity which supported his position (RX 8 at 46). Mr. Castronovo testified he was first contacted by

Respondent to review Petitioner's report on 3/14/25 (RX 8 at 52). **Regarding the deposition at hand, Mr. Castronovo reviewed his emails and confirmed that he was first contacted by Respondent on 7/17/25 to schedule the 8/6/25 deposition (RX 8 at 59).** Despite testifying that he was of the opinion that Petitioner could return to her normal work duties, Mr. Castronovo acknowledged on cross examination that he did not have a job description, and his opinion was based upon an assumption, not a specific understanding as to Petitioner's work duties (RX 8 at 60). Accordingly, Mr. Castronovo admitted that his opinion that Petitioner could return to her prior job was not "within a reasonable degree of medical certainty" (RX 8 at 61). Finally, although he disagreed with the methodology used by ATI for the FCA, Mr. Castronovo acknowledged that there was no governing body in the state of Illinois which determines the proper FCA/FCE methodology (RX 8 at 61). Furthermore, although he cited the standards set forth by the American Physical Therapy Association as a basis for his opinions, Mr. Castronovo acknowledged that neither the state of Illinois nor the IWCC had adopted the standard set for by the American Physical Therapy Association (RX 8 at 62).

On cross, Mr. Castronovo acknowledged that he previously testified, under oath for another matter, that "the majority of FCE reports are unreliable (RX 8 at 56)." In fact, Mr. Castronovo admitted that he had never determined an ATI FCA was reliable and further acknowledged having testified that "every FCE from ATI is not good" (RX 8 at 69). In reviewing his business model, Mr. Castronovo charges \$1,350.00 per FCE report, performs 6-8 reports per month and charges \$400.00 per hour for his deposition (RX 8 at 45). Mr. Castronovo testified he was self-employed and 65% of his business consisted of FCE review reports (RX 8 at 43 & 44). Respondent's hired expert acknowledged that if he reviewed an FCE/FCA and found its study to be valid, Mr. Castronovo would not author a report and he would, therefore, generate less income (RX 8 at 51-52 & 55). Mr. Castronovo, ultimately, agreed that it was bad for business if he determined an FCE was valid (RX 8 at 55).

As of the date of arbitration, 9/23/25, Petitioner continued working at Supermarket El Paso and had not sought alternate employment (T. at 58 & 70). From her date of hire through 9/7/25, Petitioner earned \$15.00 per hour, worked 6 hours per day, 24-36 hours per week and earned a total of \$9,642.90 (PX 36 & T. at 58). Petitioner's duties at Supermarket El Paso included the stocking of products, cleaning of work areas, and assisting customers (T. at 59). Despite the light nature of her work duties, Petitioner noticed increased right shoulder and low

back pain rated a 5-6/10 after working a shift or repetitive shoulder activity (T. at 60-61). Petitioner made clear that she had no such symptoms prior to sustaining the work accidents on 9/15/23 & 12/13/23 (T. at 60). Petitioner also reported back pain going up to a 6/10 with prolonged sitting (T. at 62). Petitioner is right-handed and the right shoulder injury has also negatively impacted her activities of daily living (T. at 63). For example, she is unable to reach to the back of head to wash her hair and is unable to reach back with her right hand to properly clean herself after using the restroom (T. at 64). The pain and limitations from the injuries have taken an emotional toll on Petitioner (T. at 64)

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 is to evaluate witness credibility, evaluate 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). The Arbitrator took into account Petitioner's testimony and demeanor at arbitration and deemed her to be a hard-working credible witness.

With respect to the admission of Dr. Balaram's Addendum Report dated 1/10/25, the Arbitrator finds as follows:

Respondent sought to admit Dr. Balaram's addendum report in evidence as RX #1; this exhibit is rejected.

Section 12 of the Act indicates that a physicians' report must be provided no later than 48 hours before the start of a hearing and that, if the report is not disclosed, the examining physician will not be allowed to testify. *City of Chicago v. Workers' Compensation Commission*, 2008 WL 5382001 (Ill.App. 1 Dist.). Within the concurring opinion, Justice Gordon stated, "given its plain and ordinary meaning, a hearing begins when the parties start to present their arguments and evidence to the arbitrator." *Id.*

In the case at hand, this matter was scheduled for arbitration on 2/26/25. The record as a whole supports the conclusion that Respondent did not provide Petitioner the addendum report until 2/25/25 (See PX 40; PX 46 at 5; T. at 12). Respondent has provided no evidence to show that the addendum report was provided to Petitioner at any time prior. The parties appeared before the arbitrator, went on the record, and presented their arguments on 2/26/25. It is undisputable that Respondent failed to provide the addendum report within 48 hours of the scheduled arbitration. In any event, the arbitrator finds that this report in question is of very little probative value. In fact, this entire issue's relevance goes to the issue of penalties and fees.

With respect to causal connection, the Arbitrator finds as follows:

There is no dispute within the record as it pertains to causal connection between the work accident and Petitioner's right shoulder condition of ill being. Accordingly, the Arbitrator finds Petitioner's right shoulder condition is causally related to the work accident.

It is well-established law that proof of prior sound health and change immediately following and continuing after an injury may demonstrate that an impaired condition was due to the injury. Navistar International Transportation Corporation, 315 Ill. App. 3d 1197, 1206 (2000). The Court specifically stated that a causal connection between work duties and a condition may be established by a chain of events. This includes the Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. *Id.*

In the case at hand, the Petitioner's testimony regarding the chain of events is documented within the treating medical records and is undisputed. Prior to the work accident, Petitioner was 44 years old with no prior history of right shoulder pain (T. at 225). Petitioner

slipped and fell onto her right hand; immediately noting right shoulder pain (T. at 26). Petitioner immediately sought care for right shoulder pain (PX 1 at 9) and eventually underwent the right shoulder MRI which revealed a focal full thickness rotator cuff tear (PX 2A at 402). Both the treater, Dr. Poepping, and the IME expert, Dr. Balaram, agree that the rotator cuff tear was causally related to the work accident (See PX 3 at 3 & RX 3)

Despite the care received, including an approved right shoulder surgery, as of the date of arbitration, Petitioner continued experiencing ongoing right shoulder pain with diminished range of motion. Every medical provider agrees that Petitioner's right shoulder condition of ill-being was caused by the undisputed work accident. Furthermore, the chain of events supports a finding of causal connection. As was the case in Navistar, the chain of events in the case at hand demonstrate that Petitioner's health deteriorated from a state which allowed her to work without issue pre-accident, to a state of disability immediately following the undisputed work accident. For the aforementioned reasons, the Arbitrator finds Petitioner satisfied her burden of proof and established causal connection between the 9/15/23 work accident and her right shoulder condition of ill-being.

With respect to the reasonableness and necessity of accrued medical, the Arbitrator finds as follows:

The Arbitrator finds the record as a whole to support a finding that all care rendered through the date of Arbitration was reasonable, necessary, and causally related to the work accident.

Pursuant to Section 8.7(i)(3) of the Act, once the utilization review process is invoked by Respondent, "An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section."

Respondent did not offer a single UR report into evidence to deny the necessity of any of the care rendered. Respondent's only expert, Dr. Balaram agreed with the necessity of the preoperative physical therapy, agreed with the need for surgery, agreed with the need for post operative therapy and further agreed an additional 6 weeks of therapy starting on 6/14/24.

Taking into account the reliable opinions of Petitioner's medical providers, Respondent's preauthorization of surgery, Dr. Balaram's agreement with treatment rendered, and the lack of utilization reviews submitted into evidence by Respondent, the arbitrator finds no basis for the denial of any of the outstanding medical bills submitted into evidence. The arbitrator acknowledges an overlap between the care for treatment related to Petitioner's right shoulder due to the 9/15/23 work accident and the treatment related for Petitioner's lumbar injury due to the 12/13/23 work accident. Ultimately, the arbitrator finds all care to be reasonable, necessary and causally related to each work accident. Accordingly, the arbitrator awards all medical bills submitted into evidence as PX 7 through PX19 and reduced per the fee schedule as PX 38. Accordingly, the arbitrator awards Petitioner \$78,185.23 in reasonable, necessary and causally related medical.

With respect to TTD benefits, the Arbitrator finds as follows:

The Arbitrator finds Petitioner satisfied her burden of proof and is awarded TTD benefits from 1/9/24 – 6/4/24 and 10/22/24- 10/25/24.

There is no dispute within the record as to whether Petitioner is entitled to TTD from 1/9/24 – 6/4/24. Petitioner underwent the approved surgery on 1/9/24; moving forward, Dr. Poepping recommended that Petitioner remain off work through 5/23/24 (PX 3 at 4 & 56-60). Moving forward, Dr. Poepping recommended light duty work. Subsequently, Respondent offered Petitioner light duty work starting on 6/5/24 (PX 23). Respondent's expert, Dr. Balaram, opined that as of 6/11/24, Petitioner could return to work with restrictions for 6 weeks (RX 3). After six weeks, Dr. Balaram stated consideration of full duty work would be warranted. The arbitrator notes that Dr. Balaram did not specifically address Petitioner's work status prior to 6/11/24. In light of the lack of dispute, the arbitrator awards TTD from 1/9/24 – 6/4/24.

As of 10/21/24, Petitioner was working with restrictions per the recommendations of Dr. Poepping (PX 3 at 65). On this date, Petitioner was advised by Respondent that light duty work would no longer be provided at the Aurora Food Pantry. Respondent's only possible basis for the denial of TTD from 10/22/24 – 10/25/24 is Dr. Balaram's opinion that consideration of full duty work was warranted on or about 7/23/24 (RX 3). Petitioner testified that she, in fact, attempted to work without restrictions after the 8/30/24 appointment with Dr. Poepping and noted an immediate increase in pain (T. at 40). In light of the increased symptoms, Dr. Poepping again

provided light duty restrictions on 9/4/24 (RX 3 at 65). The Arbitrator finds the implementation of light duty restrictions to be reasonable. In light of this and Respondent's refusal to provide light duty work, the arbitrator awards TTD From 10/22/24 – 10/25/24.

Due to the forementioned reasons, the Arbitrator finds Petitioner has satisfied her burden of proof and is entitled to TTD benefits from 1/9/24 – 6/4/24 and 10/22/24- 10/25/24 for a total of 21 & 1/7th weeks. Using the TTD rate of \$561.78, Petitioner should have been paid \$11,877.63 in TTD benefits. Taking into account a credit of \$13,516.91 for TTD paid (RX 2), the Arbitrator calculates a TTD overpayment of \$1,639.28.

With respect to TPD benefits, the Arbitrator finds as follows:

Petitioner seeks TPD from 9/16/23 – 1/8/24; 6/5/24 – 8/29/24 and 9/4/24 – 10/21/24. The Arbitrator finds Petitioner satisfied her burden of proof and is awarded TPD benefits from 6/5/24 – 8/29/24 and 9/4/24 – 10/21/24.

Throughout the period of claimed TPD Petitioner worked light duty for Respondent directly or at the Aurora Food Pantry, a location set up by Respondent. The light duty restrictions during the claimed TPD periods were assigned by Advocate Occupational Health, Grandview Health Partners and Dr. Poepping. Respondent's expert, Dr. Balaram, does not dispute the necessity of light duty restrictions throughout this period of time.

Petitioner provided no evidence to show she earned less while working from 9/16/23 – 1/8/24; accordingly, TPD benefits are not awarded for this initial period of time. Petitioner submitted into evidence her checks stubs covering the periods of claimed TPD from 6/5/24 – 8/29/24 and 9/4/24 – 10/21/24 along with a chart which provides an overview of her earnings (PX 33). Throughout the 19 weeks worked, Petitioner has demonstrated that she earned a gross total of \$10,748.98. Prior to the work accident, during these 19 weeks, Petitioner would have earned \$16,010.73. This is a difference of \$5,261.75 and TPD amount owed amounting to \$3,507.80. After taking into account the TTD overpayment of \$1,639.28, Petitioner is awarded \$1,868.52 back due TPD benefits.

With respect to nature and extent of the injury, the Arbitrator finds as follows:

As noted previously, there is no dispute within the record as it pertains to causal connection between the work accident and Petitioner's right shoulder injury, the dispute at hand

when discussing permanency is whether Petitioner needs restrictions. The Arbitrator finds that Petitioner satisfied her burden of proof in establishing that she needs permanent restrictions due the right shoulder injury sustained on 9/15/23 and, as a result of said restrictions, she now has a limited earning capacity.

The arbitrator notes that Petitioner had no prior history of right shoulder pain. Subsequent to the work accident, she noted immediate right shoulder symptoms and was diagnosed with a right focal full thickness rotator cuff tear which required surgery. Subsequent to the surgery, Petitioner unsuccessfully attempted to return to work without restrictions in August of 2024. Due to the increased pain, on 9/4/24, Dr. Poepping prescribed an FCE which took place at ATI on 10/15/24 and found her capable of lifting 14.8 pounds occasionally above the shoulder, 28 pounds occasionally from desk to chair; 25.8 pounds occasionally from chair to floor (PX 3 at 17 and PX 6 at 5).

Respondent relies upon the 6/21/24 Section 12 report of Dr. Balaram and the testimony of Joe Castronovo to question the reliability of the FCE and deny the permanent restrictions claimed by Petitioner. The Arbitrator finds Dr. Balaram's 6/21/24 Section 12 report does not offer a basis for the denial of permanent restrictions. Within his report, Dr. Balaram simply stated that full duty work should be considered within 6 weeks (i.e. approximately 7/23/24) (RX 3). Petitioner's testimony and the medical records show that she attempted to work at full duty but immediately noted increased pain. The arbitrator finds Petitioner to be a credible witness who never refused to work and made every effort to return to work without restrictions. After reporting the increased pain to Dr. Poepping, it was determined that an FCE was necessary to outline her work restrictions. The Arbitrator finds the recommendation of an FCE to be reasonable. In light of the fact that Dr. Poepping examined Petitioner after the failed return to work at full duty while Dr. Balaram never saw her after 6/21/24, the arbitrator finds the opinions of Dr. Poepping to be more credible.

Next, the arbitrator considers the opinion of Joe Castronovo and finds Respondent's expert to not be reliable. It is clear to the arbitrator that Mr. Castronovo has an inherent monetary interest in finding FCE/FCA reports to be invalid. The arbitrator finds the medical records as a whole (including the ATI FCA report and the opinions of Dr. Poepping) along with Petitioner's credible testimony to support the need for permanent restrictions.

According, to Section 8(d)1, “If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.”

Due to the accident in question and the resulting permanent restrictions, Petitioner has been unable to pursue her customary line of employment. Since the date she was discharged at MMI, she has found part time employment and has been earning less than she did prior to the work accident. From the date of MMI, 10/26/24, through the period ending on 9/7/25 (45 & 2/7th weeks), Petitioner earned a total of \$17,965.67 with Aurora Fresh Market, Unistaff and El Paso Supermarket (See PX 34, 35, 36 & 37). Using the agreed AWW of \$842.67, Petitioner would have earned \$38,160.91 during this period of time. This results in a difference of \$20,195.24 and a wage differential of \$13,463.49 for the period through 9/7/25 which the Arbitrator awards to Petitioner.

Moving forward, the Arbitrator calculates the wage differential based upon Petitioner’s average earnings with Supermarket El Paso. During the 21 weeks of earnings at Supermarket El Paso submitted into evidence as PX 36, Petitioner earned a total of \$9,342.90 and had an AWW of \$449.90. Using the agreed AWW of \$842.67 with Respondent, this results in a difference of \$392.77 and wage differential of \$261.85. Petitioner is therefore awarded \$598.51 in wage differential accumulated from 9/8/25 through the date of arbitration on 9/23/25.

In total, through the date of arbitration (9/23/25), Petitioner is awarded \$14,062.00 in accrued wage differential benefits. Moving forward, Pursuant to Section 8(d)1, the Arbitrator also awards Petitioner a wage differential of \$261.85 until the date she reaches the age of 67.

With respect to penalties and attorney’s fees, the Arbitrator finds as follows:

The Arbitrator finds that the undisputed facts demonstrate penalties and attorneys’ fees pursuant to Section 16, 19(l) and 19(k) of the Act are warranted.

Section 19(l) penalties should be awarded if the Respondent fails, neglects, refuses, or unreasonably delays payment of benefits due. An employer withholding benefits has the burden of proving that its delay was reasonable. Jacobo v. Illinois Workers' Comp. Comm'n, 959 N.E.2d 772 (2011). In McMahan v. Indus. Comm'n, the Supreme Court held Section 19(l) penalties are “**mandatory** if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.” 183 Ill. 2d 499 at 515. When the Respondent fails to meet its burden, the Petitioner is to be awarded thirty dollars (\$30) per day, with a maximum award of ten thousand dollars (\$10,000.00).

Under a more stringent standard, penalties under Section 19(k) and Section 16 are appropriate if Respondent is guilty of delay or unfairness towards the employee in the payment of benefits, is unreasonable or vexatious in delaying payment of benefits, or engages in frivolous defenses which do not present real controversy. Unlike Section 19(l) penalties, these penalties are not mandatory, they are discretionary and “intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose.” Mech. Devices v. Indus. Comm'n, 344 Ill. App. 3d 752.

In the case at hand, on 12/27/23, Respondent preauthorized the right shoulder surgery which took place on 1/9/24 (PX 22 and PX 3 at 4). On 7/17/24, while working with undisputed work restrictions, Petitioner made a demand for payment of TPD (PX 25). Subsequently, on 11/14/24, Petitioner made a demand for payment of the preauthorized medical care (PX 27 & 28). Included within the unpaid medical forwarded to Respondent were the pre-fee schedule balances with Lakeshore Open MRI (\$7,960.91); G&T Orthopaedics (\$32,540.00); Western Touhy Anesthesia (\$908.14); Lakeshore DME (\$13,000.00); and Lakeshore Surgery Center (\$88,120.51) (PX 27). Next, on 2/26/25, Petitioner's counsel again requested payment of TPD stating, “After taking into account the overpayment of TTD (\$1,643.72), it is undisputable that my client is still owed \$1,864.08 in TPD. If you disagree with this, I ask that you look at the file and provide a basis for said dispute. We ask that you forward \$1,864.08 to my office immediately (PX 39).”

The parties have an agreed AWW and it is undisputable that Petitioner is owed TPD for the period of time she worked at the food pantry. Despite the lack of dispute, as of the date of arbitration, Respondent has failed to pay the requested TPD and has provided no basis for the failure to do so. As of the date of arbitration, for both pending claims, Respondent had failed to

pay \$78,185.23 in undisputed outstanding medical pursuant to the fee schedule (PX 38). Despite the notice of the pending balances on 11/14/24, as of the date of arbitration, Respondent has offered no basis for the failure to pay.

Finally, it is clear from the record that the Respondent has needlessly sought to delay the matter at hand. On 2/26/25, Respondent requested to continue the arbitration under the guise that Respondent wanted to depose the IME doctor and subpoena wage records. This matter was then continued until 3/11/25. Prior to the scheduled 3/11/25 hearing, Respondent asked that matter be continued again until 4/21/25 as Respondent still sought subpoena responses from Cermak Produce and Supermarket El Paso (PX 42). Instead of seeking to enforce the missing subpoena response, on 3/14/25 Respondent hired an expert to review the FCE (RX 8 at 52). Despite the FCE review report being completed on 4/3/25, Respondent again waited until the last moment to provide Petitioner a copy of the report, thus, resulting in the continuance of the rescheduled 4/21/25 hearing (PX 42). On 4/18/25, Petitioner's counsel made it clear to Respondent that hearsay would not be waived for the new FCE review report and that a deposition was necessary (PX 43). After speaking to the arbitrator on 5/2/25, Petitioner again advised Respondent that the deposition of Mr. Castronovo was necessary (PX 44). The arbitrator takes judicial notice that on 7/17/25, the parties appeared before the Arbitrator at which time Petitioner asked for a hearing date in August, meanwhile, Respondent's counsel requested an additional month to schedule depositions as Respondent had not received response from Mr. Castronovo regarding the deposition dates. Based upon Respondent's assertions, this matter was set for hearing on 9/23/25.

The parties moved forward with the deposition of Mr. Castronovo on 8/6/25 (RX 8). During his deposition, Mr. Castronovo reviewed his personal emails and **confirmed that he was first contacted by Respondent on 7/17/25 to schedule the deposition (RX 8 at 59)**. It is clear from Mr. Castronovo's sworn testimony that one of the following statements holds true: 1) Respondent was not truthful with the arbitrator on 7/17/25; or 2) Mr. Castronovo, Respondent's hired expert, lied under oath regarding when he was first contacted to schedule the deposition.

This matter finally proceeded to hearing on 9/23/25, almost 7 months after the parties went on the record on 2/26/25. During this extended period of time, Respondent never deposed the IME doctor despite requesting a continuance in order to do so and Petitioner agreeing to waive hearsay. Despite the 7-month delay, Respondent only received a single subpoena

response from one of the employers and made no effort to enforce the missing subpoena response from Cermak Produce.

Respondent has failed to offer a reasonable basis for the failure to pay TPD and medical benefits which Respondent undoubtedly knew were owed. Pursuant to McMahan, the Respondent has the burden to show that the withholding of benefits was reasonable; that burden has clearly not been met in the case at hand. 959 N.E.2d. 772 (2011). Penalties pursuant to Section 19(l) are therefore mandatory. Petitioner originally requested payment of TPD on 7/17/24 but failed to provide a specific dollar amount requested. On 11/14/24, Petitioner did make a specific demand for payment of medical bills followed by a specific demand for payment of TPD on 2/26/25 (PX 27, 28 & 39). Since 11/14/24, Respondent's unreasonable denial of medical/TPD benefits lasted 314 days; as such, the Arbitrator awards \$9,420.00 in Section 19(l) penalties.

The Arbitrator also finds Respondent's overall handling of this claim including the refusal to pay undisputed medical care and undisputed TPD to be in bad faith and therefore warranting penalties pursuant to Section 19(k). Penalties are also warranted due to Respondent's unreasonable or vexatious requests for continuances; especially, the events during the pretrial on 7/17/25. A failure to assess penalties rewards Respondent for its vexatious behavior. Accordingly, the Arbitrator awards the Petitioner 50% of the \$78,185.23 owed for undisputed medical care; to wit \$39,092.61 and 50% of the \$1,864.08 in past due TPD benefits, to wit, \$932.04. Pursuant to Section 16, the Arbitrator awards Petitioner's attorneys 20% of the aforementioned unpaid medical bills, to wit \$15,637.04 and 20% of the past due TPD benefits, to wit, \$372.82

This case was continued more than once at the respondent's request over the petitioner's objection – to subpoena records which never were subpoenaed and to schedule deposition that was not scheduled for two more months so the case was continued again. The arbitrator does not award penalties and fees lightly. But the respondent's actions in this case fall squarely within the very definition of vexatious and dilatory and in bad faith. It is this very behavior which penalties and fees under sections 19 and 16 of the Act is intended to discourage.

It is for all of these reasons and based on the entirety of the evidence of record that the above penalties and fees are imposed.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC033832
Case Name	Maria Guadalupe Navarro v. Labor Personnel, LLC, loaning employer and Factor75, LLC, borrowing employer
Consolidated Cases	23WC029402
Proceeding Type	Petition for Review
Decision Type	Corrected Commission Decision
Commission Decision Number	26IWCC0260
Number of Pages of Decision	21
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	Tina DiBenedetto

DATE FILED: 9/24/2026

/s/ Maria Portela, 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)
☒ Modify ☐ up	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA GUADALUPE NAVARRO,

Petitioner,

vs.

NO: 23WC033832
 26IWCC0260

LABOR PERSONNEL; FACTOR 75,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, penalties and fees, and "Rejection of Addendum Report," and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator as stated below and otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

Initially, the Commission finds that Dr. Balaram's addendum report, dated January 10, 2025, should have been admitted into evidence. To comply with Section 12 of the Act, a physician's report must be provided to the opposing party "not later than 48 hours before the time the case is set for hearing." 820 ILCS 305/12; See also *Ghere v. IC* (Howell Asphalt), 278 Ill. App. 3d 840, 845, 215 Ill. Dec. 532, 536, 663 N.E.2d 1046, 1050 (1996). The appellate court has clarified that §12 "dictates that the proponent of medical testimony provide the other party with the required medical reports 48 hours before evidence is presented on the first day of the arbitration hearing." *Mulligan v. IWCC*, 408 Ill. App. 3d 205, 219, 349 Ill. Dec. 227, 239, 946 N.E.2d 421, 433 (2011).

In the case at bar, although February 26, 2025 had been the date "set for hearing," no substantive evidence was heard on that date. *Px46*. Rather, the transcript reflects that an on the record discussion was had regarding whether a continuance should be granted because Respondent

wanted to take the deposition of its §12 physician, Dr. Balaram, with respect to the addendum report, and Respondent also wanted to subpoena wage records from Petitioner's subsequent employers "to get accurate records of earnings for calculation of temporary, partial, and/or wage differential." *Id. at 3-4, T.1248-9*. The Arbitrator granted the continuance and stated, "I'm not going to make somebody have a trial if they're not ready to go." *Id. at 4*. Therefore, it does not seem as though the Arbitrator believed the trial/hearing had begun that day.

The only "argument" presented on February 26, 2025 was that Petitioner had a *Ghere* objection to Dr. Balaram's addendum report because he had not received it until the day prior on February 25, 2025. *Id. at 5*. Although Petitioner may have had a valid *Ghere* objection had the trial proceeded that day, it did not. Instead, the trial was continued to March 11, 2025. The Arbitrator also indicated that if the case didn't proceed on that date, it would be tried "at the latest in April." *Id. at 4*.

The Commission finds that the hearing did not begin on February 26, 2025. Rather, a record was made regarding the reasons for a continuance. No arguments were made about the substantive issues in this case and no evidence was presented. Therefore, pursuant to the rationale in *Mulligan*, the hearing had not actually begun and Respondent's tender of Dr. Balaram's addendum report to Petitioner's attorney on February 25, 2025 did not violate the 48-hour rule in §12 of the Act. We note that, although Petitioner's attorney objected to the report based on *Ghere*, he waived any hearsay or foundation objections. *T.97*. Thus, Dr. Balaram's addendum should have been admitted into evidence.

Regarding medical expenses, the Commission notes the Arbitrator awarded \$78,185.23, as shown in *Px38* and which was already adjusted based on Petitioner's calculations of the medical fee schedule in §8.2 of the Act. However, this amount includes charges from both of Petitioner's consolidated cases: 23WC029402 and 23WC033832. It also appears that this summary includes some charges which, according to the medical bill exhibits, had already been paid by Respondent. *Px38* also does not separate between medical expenses related to the lumbar injury on December 13, 2023, which is the subject of the current Corrected Decision, from those related to her right shoulder accident on September 15, 2023, which is the subject of the Corrected Decision in case number 23WC029402. We find that Petitioner is entitled to all medical expenses contained in the exhibits related to her lumbar treatment, adjusted pursuant to the fee schedule in §8.2 of the Act, with Respondent receiving credit for amounts paid prior to the hearing. Petitioner shall not receive double payment for any medical bills.

We note the Arbitrator awarded all penalties and attorney's fees related to this case in the Corrected Decision in the companion case (23WC029402). We find this was improper and they should have been separated by case number.

On November 14, 2024, Petitioner's attorney sent Respondent's attorney an email demanding payment of outstanding medical bills, including those related to the lumbar condition which is the subject of this case. *Px27, T.1087*. One of the bills included in this demand was from Lakeshore Open MRI, which included the December 21, 2023 charges for a lumbar MRI, right hip MRI and pelvis CT scan. *Id., T.1094*. There is no evidence in the record to indicate that these charges were paid. Other charges related to Petitioner's lumbar injury also remained unpaid at the

time of trial. Since November 14, 2024, when the demand for payment of medical expenses was made, Respondent's unreasonable denial of medical benefits lasted 314 days. Therefore, the Commission awards \$9,420.00 in Section 19(l) penalties (314 days x \$30 per day). We note that this amount was also awarded in the companion case (23WC029402) for Respondent's unreasonable delay in payment of medical expenses for the right shoulder and temporary partial disability benefits in that case. This does not result in a double award because the medical expenses unreasonably delayed in the current case are related to Petitioner's lumbar injury. We find separate §19(l) penalties are appropriate in each of the cases.

We find that Respondent's conduct and failure to pay the medical bills was unreasonable and vexatious under both §19(k) and §16 of the Act, and award §19(k) penalties equal to 50% of the amount of unpaid medical expenses relating to the lumbar injury, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts paid by Respondent prior to the hearing. Similarly, we award §16 attorney's fees equal to 20% of the amount of unpaid medical expenses relating to the lumbar injury, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts paid by Respondent prior to the hearing.

Regarding the nature and extent of Petitioner's injury, we affirm the Arbitrator's analysis of the five factors in §8.1b(b) of the Act. However, we note a discrepancy between the Conclusions of Law section, in which the Arbitrator awarded 12.5% of the person as a whole and the Order section, in which he awarded 37.5 weeks and which would equal 7.5% of the person as a whole. The Commission finds that Petitioner is entitled to 37.5 weeks PPD for the loss of use of 7.5% of the person as a whole and modify the Corrected Decision accordingly.

Finally, we correct two clerical errors. In the Findings section, we change "12/15/23" to "12/13/23." On page 11, in the fourth line, we add the number "1" to "L5/S".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$505.60 per week for a period of 37.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, under §8(a) of the Act, all medical expenses contained in the exhibits related to her lumbar injury, adjusted pursuant to the fee schedule in §8.2 of the Act, with Respondent receiving credit for amounts paid prior to the hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$9,420.00 for penalties as provided in §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as penalties under §19(k) of the Act, an amount equal to 50% of the unpaid medical expenses relating to the lumbar injury, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts Respondent paid prior to the hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as attorney's fees under §16 of the Act, an amount equal to 20% of the unpaid medical expenses relating to the lumbar injury, adjusted pursuant to the fee schedule in §8.2 and adjusted for amounts Respondent paid prior to the hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, under §8(a) of the Act, all medical expenses contained in the exhibits related to her lumbar treatment, adjusted pursuant to the fee schedule in §8.2 of the Act, with Respondent receiving credit for amounts paid prior to the hearing.

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 \$30,000.00.

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

SEPTEMBER 24 2026

/s/ Maria E. Portela

SE/

/s/ Marc Parker

O: 7/23/26

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/s/ Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC033832
Case Name	Maria Guadalupe Navarro v. Labor Personnel, LLC, loaning employer and Factor75, LLC, borrowing employer
Consolidated Cases	23WC029402
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Daniel J Levato

DATE FILED: 11/18/2025

/s/ Paul Seal, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 18 2025 3.71%

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
 CORRECTED ARBITRATION DECISION**

Maria Guadalupe Navarro

Case # **23** WC **33832**

Employee/Petitioner

v.

Consolidated cases:

Labor Personnel; Factor 75:

Employers/Respondents

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Paul Seal**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **9/23/25**. 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 **Admission of the addendum report**

FINDINGS

On **12/15/23**, 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 **\$42,976.16**; the average weekly wage was **\$842.67**.

On the date of accident, Petitioner was **44** 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 **\$13,516.91** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$13,516.91**.

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

ORDER

1. The arbitrator does not award TTD benefits in relation to the 12/13/23 (23 WC 33832) work accident. The arbitrator has already awarded TTD benefits in relation to the 9/15/23 (23 WC 29402) work accident; thus, the issue is moot.
2. The arbitrator does not award TPD benefits in relation to the 12/13/23 (23 WC 33832) work accident. The arbitrator has already awarded TPD benefits in relation to the 9/15/23 (23 WC 29402) work accident; thus, the issue is moot.
3. Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$78,185.23, as provided in Sections 8(a) and 8.2 of the Act and submitted into evidence as PX 7 through PX 19.
4. Respondent shall pay Petitioner permanent partial disability benefits of **\$505.60/week for 37.5 weeks**, because the injuries sustained caused the **12.5% loss** of the MAW, as provided in Section 8(d) (2) of the Act.
5. The arbitrator does not award additional penalties and attorney's fees in relation to the 12/13/23 (23 WC 33832) work accident. The arbitrator has already awarded Section 16, 19(l) and 19(k) penalties and fees in relation to the 9/15/23 (23 WC 29402) work accident; thus, the issue is moot.

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

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



Signature of Arbitrator

NOVEMBER 18 2025

FINDINGS OF FACT

Proofs were closed on 9/23/25 in Wheaton, Illinois, before Arbitrator Paul Seal. Issues in dispute at arbitration were admission of exhibits, causal connection, medical expenses, TTD, TPD, Penalties and attorney's fees, and permanency.

As of 9/15/23, Petitioner had been employed by Respondent, a staffing agency, for approximately 3.5 years (T. at 24). Throughout her employment, Respondent sent Petitioner to work at Factor 75 as a general laborer (T. at 24). In order to complete her work duties, Petitioner engaged in the lifting of objects weighing from 10-100 pounds (T. at 24). Petitioner had no prior history of injury to her right shoulder or lumbar spine (T. at 25). Throughout her employment, she worked 6 days per week and was able to complete her work duties without issue.

On 9/15/23, Petitioner reported to work in the same state of sound health (T. at 26). That day, at approximately 7 AM, Petitioner walked towards the restroom, slipped on liquid, landed on her right hand and felt a pop in her right shoulder (T. at 26). Petitioner immediately reported the incident to a representative from the staffing agency and was sent for care at Advocate Occupational Health that same day.

The initial treatment notes from Advocate Occupational Health document that Petitioner slipped on a wet patch as her coworker cleaned the floor (PX 1 at 9). Petitioner underwent x rays of the right shoulder and right elbow (PX 1 at 15-16). She was initially diagnosed with a sprain of the right shoulder and sent back to work with restrictions (PX 1 at 10). Petitioner continued working for Respondent while also following up at Advocate Occupational Health up through 10/23/23 (T. at 28). Due to the lack of improvement, Petitioner sought a second opinion at Grandview Health Partners on 11/2/23 where she reported ongoing cervical, right shoulder, right elbow and right wrist pain due to the 9/15/23 work accident (PX 2A at 3). Petitioner was prescribed PT, asked to undergo an MRI of the right shoulder, and again sent back to work with restrictions (PX 2A at 10-2). The 11/11/23 right shoulder MRI demonstrated a focal full thickness rotator cuff tear (PX 2A at 402). Petitioner was then referred to Dr. Poepping who ordered surgery to address the rotator cuff tear (PX 3 at 3). Pending surgery, Dr. Poepping recommended that Petitioner continue working with restrictions. Petitioner testified that she continued performing her normal work duties with the use of her left, uninjured, arm (T. at 29).

On 12/13/23, while still working with restrictions for Respondent, Petitioner sustained a second work accident. On this date, Petitioner was pushing racks of condiments when she slipped on ice and landed flat on her back (T. at 30). Petitioner noted immediate pain in her back and right shoulder (T. at 31). That same day, she followed up at Grandview Health Partners to whom she reported slipping on ice and landing onto her right hip thus resulting in lumbar/hip/abdomen pain (PX 2B at 3). Dr. Gavin ordered a CT scan of the abdomen, a lumbar MRI, an MRI of the right hip and, again, sent her back to work with restrictions (PX 2B at 79). Radiologist, Dr. Kuritza, read the 12/21/23 lumbar MRI scan to show a 2-3 mm posterior disk protrusion at L4/5 indenting the thecal sac with generalized bilateral neuroforaminal narrowing and a 4-5 mm posterior disk protrusion at L5/S1 indenting the thecal sac with generalized bilateral neuroforaminal narrowing (PX 2A at 410). Petitioner was then instructed to follow up with pain management for the lumbar injury.

On 12/27/23, Liza Perez, Respondent's claims adjuster, emailed Lakeshore Surgery Center to advise that the proposed surgery was authorized (PX 22). Petitioner continued working with restrictions until 1/8/24, the date prior to the approved surgery (T. at 32). On 1/9/24, Dr. Poepping performed the approved right shoulder arthroscopic rotator cuff repair, subacromial decompression, debridement and open tenodesis at Lakeshore Surgery Center (PX 3 at 4). Post surgery, on 1/12/23, Dr. Poepping instructed Petitioner to remain off work and commence PT (PX 3 at 9).

During a lumbar examination on 2/6/24, Dr. Gavin documented improved low back pain with an ongoing burning sensation from her low back down Petitioner's bilateral posterior thighs and into her knees (PX 2B at 34). On 3/8/24, Petitioner was seen by Dr. Anis Mekhail to address the ongoing lumbar pain (PX 4 at 3). During the initial date of service, Dr. Mekhail documented ongoing low back pain with radiation down the bilateral lower extremities as a result of the 12/13/23 work accident (PX 4 at 3). Dr. Mekhail reviewed the MRI scan and diagnosed herniated discs at L4/5 and L5/S1; he recommended cortisone injections to address the lumbar radiculopathy (PX 4 at 3-4). On 3/15/24, Dr. Poepping kept Petitioner off work and recommended a shoulder strengthening program.

On 4/12/24, at Dr. Mekhail's recommendation, Petitioner was seen at the Pain and Spine Institute at which time Petitioner reported 8/10 low back pain traveling down the right leg (T. at 32 and PX 5 at 4). Petitioner was diagnosed with lumbar radiculopathy and prescribed right

transforaminal steroid injections from L4 to S1 which she underwent with Dr. Patel on 5/6/24 (PX 5 at 5 & 7). Subsequent to the injection, on 5/21/24, Petitioner reported to Dr. Patel that she was 100% better and was thereby discharged without restrictions for the lumbar injury (PX 5 at 10). On 5/24/24, Dr. Poepping recommended ongoing therapy while allowing Petitioner to return to work with 5-pound lifting restrictions (PX 3 at 13 & 60).

Respondent then provided Petitioner with a temporary alternative light duty assignment working at the Aurora Food Pantry starting on 6/5/24 (PT. at 35 and PX 23). At Respondent's request, on 6/11/24, Petitioner underwent a Section 12 examination with Dr. Ajay Balaram (PX 24). Dr. Balaram determined there was no evidence of symptom magnification; diagnosed Petitioner as being 5 months post right shoulder arthroscopic rotator cuff repair/subpectoral biceps tenodesis. Respondent's expert opined Petitioner had undergone appropriate surgical intervention and recommended 6 more weeks of physical therapy 2-3 times per week (PX 24). Moving forward, Dr. Balaram agreed with the work restrictions imposed by Dr. Poepping and agreed that Petitioner's need for work restrictions was causally related to the work accident (PX 24). Dr. Balaram further opined Petitioner would be at MMI in 8 weeks from the IME exam (PX 24).

On 7/17/24, Petitioner's counsel emailed Respondent's counsel requesting confirmation of the average weekly wage, an overview of the TTD paid to date and also requested ongoing payment of TPD benefits starting on 6/5/24 (PX 25). On 7/19/25, Dr. Poepping documented Petitioner had slight improvement but still had ongoing difficulty with overhead activity (PX 3 at 15). In light of these symptoms, Dr. Poepping recommended that Petitioner complete her scheduled PT and move forward with an FCE (PX 3 at 15). Petitioner followed up with Dr. Poepping on 8/30/24 without having undergone the recommended FCE. Petitioner testified that despite her symptoms, she asked that Dr. Poepping release her back to work without restrictions because she was earning less money and wanted to get back to work full time so that she could earn her full wages (T. at 38-39). Dr. Poepping's dictation from 8/30/24 documents that Petitioner felt she could work her normal activities; thus, she was discharged from care and told to follow up as needed (PX 3 at 16).

Upon reporting back to work at full duty at the Aurora Food Pantry, Petitioner noted increased back/shoulder pain and further noted that she was not able to lift objects above her head (T. at 40). In light of the symptoms, just 5 days later, Petitioner saw Dr. Poepping again on

9/4/24 at which time he documented that Petitioner was having difficulty with regular work activities (PX 3 at 17). In light of the difficulty, Dr Poepping again recommended a functional capacity evaluation and sent her back to work with restrictions (PX 3 at 17).

Petitioner underwent a valid FCA at ATI Physical Therapy on 10/15/24 which found her capable of lifting 14.8 pounds occasionally above the shoulder, 28 pounds occasionally from desk to chair; 25.8 pounds occasionally from chair to floor (PX 6 at 5). Petitioner returned back to work at the Aurora Food Pantry pending her follow-up with Dr. Poepping to review the FCA (T. at 41). On Monday, 10/21/24, while at the food pantry, Petitioner received notice from her supervisor that her work assignment at the food pantry had ended (T. at 43). That same morning, at 10:02 AM, Respondent's counsel emailed Petitioner's counsel advising that the work assignment had ended and that Petitioner should return home (PX 26). Petitioner's counsel responded and requested payment of TTD benefits. Despite being told that she would not be paid for her services, Petitioner asked the supervisor for permission to complete the shift that day. Petitioner testified she completed her shift that day, without pay, because she knew the food pantry needed the help (T. at 44).

On 10/25/24, Dr. Poepping saw Petitioner for the last time. On this date, Dr. Poepping reviewed the valid FCE and discharged Petitioner based upon the FCE recommendations (PX 3 at 18). That same day, Petitioner personally requested light duty work from Respondent but was not provided a job offer (T. at 44). On 10/25/24 at 12:39 PM, Petitioner's counsel emailed Respondent requesting light duty work (PX 26). In light of Respondent's refusal to provide light duty work, Petitioner immediately sought alternative employment while keeping a job diary of each employer she contacted (PX 31). From 10/25/24 through 11/14/24, Petitioner contacted 16 potential employers (See PX 31). Eventually, she found work with Aurora Fresh market working approximately 30 hours per week at \$16.00 per hour (T. at 47).

On 11/14/24, Petitioner's counsel sent an email to Respondent's counsel demanding payment of \$199,260.13 in unpaid medical bills stating, "This seems like a significant amount of unpaid bills for an approved surgery. Is there a reason why the adjuster is not paying the bill (PX 27)?" Included within the unpaid medical forwarded to Respondent were the pre-fee schedule balances with Lakeshore Open MRI (\$7,960.91); G&T Orthopaedics (\$32,540.00); Western Touhy Anesthesia (\$908.14); Lakeshore DME (\$13,000.00); and Lakeshore Surgery Center (\$88,120.51) (PX 27).

Petitioner continued looking and eventually found alternative employment with Unistaff. Petitioner testified that she continued her job search, despite already securing employment, because she wanted to work more hours and earn more money (T. at 47 & 49). The wage records submitted into evidence demonstrate Petitioner earned a total of \$1,250.48 with Aurora Fresh Market from 11/11/24 through 12/8/24 (PX 34).

Petitioner began working with Unistaff, a staffing agency, on 12/9/24 and was initially sent to work at a used book warehouse for an employer named Sell Back Your Books (T. 49 & PX 35). Petitioner's work duties included picking orders which required lifting books from the floor up to above her head (T. at 50). Petitioner noted increased pain while performing the work duties. After approximately two months, on 2/5/25, Unistaff transferred Petitioner to work at MSI Express Packaging (T. at 51). Petitioner's work duties at MSI required that she stand at her workstation while repetitively packing condiments (T. at 53). Throughout her 8-hour shift, Petitioner repetitively lifted 6-pound boxes and stacked them onto a pallet while reaching above her head in height (T. at 54). Petitioner, again, described increased pain while performing the work duties at MSI. Petitioner testified that she had never felt this type of pain before, nevertheless, she kept working because she wanted to work and finish the job (T. at 54).

This matter was set for arbitration in Geneva on 2/26/25. One day prior to the scheduled hearing, on 2/25/25 at 11:38 AM, Respondent's counsel emailed Petitioner's counsel stating, "Sorry for the delay-had some stuff going on that I had to take care of" and then proceeded to provide copies of Respondent's exhibits which included the wage statement and TTD payment overview (which had previously been requested by Petitioner on 7/17/24) and a 1/10/25 IME addendum report by Dr. Balaram (See PX 25 & 39). At 11:51 AM, Petitioner's counsel responded, "**The addendum report was never provided to me. I am objecting to the report (PX 40).**" Upon reviewing the wage statement and the TTD overview, Petitioner's counsel responded at 1:15 PM acknowledging a TTD overpayment (\$1,6343.72) and, once the credit was taken into account, requested payment of \$1,864.08 in TPD benefits (PX 39 & PX 33).

The parties went on the record on 2/26/25. According to the transcript, Petitioner was ready to proceed on all issues. Respondent requested a continuance in order to schedule the deposition of the Section 12 expert (despite Petitioner's agreement to waive hearsay) and also to subpoena wage records from Petitioner's subsequent employers (PX 46 at 4). Over Petitioner's objection, the matter was continued until 3/11/25 (PX 46 at 4). Subsequent to going on the

record, Petitioner's counsel emailed respondent the following, "After taking into account the overpayment of TTD (\$1,643.72), it is undisputable that my client is still owed \$1,864.08 in TPD. If you disagree with this, I ask that you look at the file and provide a basis for said dispute. We ask that you forward \$1,864.08 to my office immediately (PX 39)." Respondent's counsel, via email, acknowledged receipt of the demand for payment of TPD on 2/26/25 at 12:15 PM (PX 41).

Respondent issued subpoenas to Unistaff and Aurora Fresh Market on 2/27/25 (RX 6 & 7). On Monday, 3/3/25, Unistaff forwarded a subpoena response for the requested wage records (RX 6). Petitioner continued working for Unistaff until Friday, 3/7/25 when she was abruptly advised the employer no longer needed her services (T. at 55). That same day, Petitioner's counsel advised Respondent that she had been terminated (PX 41). The wage records submitted into evidence demonstrate Petitioner earned a total of \$7,507.88 with Unistaff (PX 35 & PX 37). On 3/7/25, via email, the parties confirmed with the Arbitrator that Respondent still did not have a subpoena response from the employers and the matter was again continued for arbitration until 4/21/25 (See PX 41 & 42).

Upon losing her job with Unistaff, Petitioner started looking for work with another employer. From 3/11/25 through 4/3/25, Petitioner contacted 15 potential employers (RX 31). On 3/11/25, Petitioner spoke to Irma from Supermarket (Carneceria) El Paso and was told there was no work available (PX 31 and T. at 57). Despite being turned away, Petitioner followed up with Irma and secured employment with Super Market El Paso starting on 4/14/25 (T. at 58 & PX 36).

On Monday, 4/14/25, Petitioner's counsel emailed the arbitrator advising that Petitioner was ready to proceed to hearing. Subsequently, on 4/18/25, Petitioner's counsel emailed the arbitrator advising that Respondent had just provided an FCE review report the day prior (4/17/25) and that Petitioner was objecting to the report (PX 42). On 4/18/25, Petitioner's counsel emailed Respondent advising that hearsay would not be waived for the new FCE review report (PX 43). The parties spoke to the arbitrator via Webex again on 5/2/25. That same day, at 9:40 AM, Petitioner's counsel confirmed the pretrial conversation regarding Petitioner's objections to Respondent's reports (PX 44).

Petitioner filed a motion to request a hearing on 7/10/25 (PX 45). The arbitrator takes judicial notice that during the pretrial, on 7/17/25, Petitioner asked that the matter be set for

arbitration during the next month's cycle. Respondent's counsel requested additional time to schedule the deposition of Respondent's FCE review expert as they had not received responses to the request for deposition dates. In light of Respondent's assertions that the inquiries for deposition dates had been unsuccessful, the arbitrator gave Respondent an additional month and set this matter for arbitration on 9/23/25. The arbitrator did not give the parties an August date as requested by Petitioner (See T. at 14-15).

On 8/6/25, the parties proceeded with deposition Joe Castronovo, a licensed physical therapist hired by Respondent to review the ATI FCA report (RX 8). Mr. Castronovo testified that the FCA (functional capacity assessment) is similar to an FCE (functional capacity evaluation); however, each study uses a different criteria (RX 8 at 9). Mr. Castronovo noted ATI Physical therapy used the FCA program (RX 8 at 9). He opined, however, that the FCA is not a complete examination and lacks many components of a true FCE; thereby concluding the FCA is not a reliable measurement of someone's work ability as it lacks content validity, objective measurements and there's no scientific basis for the conclusions stated therein (RX 8 at 19). Despite the similarities between the FCE and the FCA, Mr. Castronovo acknowledged, on direct examination, that he was not certified to perform an FCA (RX 8 at 9).

Mr. Castronovo opined Petitioner's FCA provided no objective evidence that she provided a maximum effort during the exam (RX 8 at 32). Mr. Castronovo essentially questioned the reliability of every FCA performed by ATI Physical Therapy; concluding that Petitioner's FCA report should not be relied upon for future vocational planning due to the inherent fallacies of the FCA program utilized by ATI in administering all functional capacity assessments (RX 8 at 42). Respondent's expert further questioned the reliability of the FCA because it was administered by Tom Werner, an athletic trainer and not a licensed physical therapist (RX 8 at 17). According to Mr. Castronovo's review of the practice Acts, in the state of Illinois, Mr. Werner, as an athletic trainer, was not certified to perform an FCA (RX 8 at 17). Based upon his observations, Mr. Castronovo concluded Petitioner could return to her prior employment without restrictions (RX 8 at 42).

On cross examination, regarding his opinion that athletic trainers were not permitted to perform an FCA/FCE in the state of Illinois, Mr. Castronovo acknowledged he was not a lawyer and that he was not familiar with any specific case law, IWCC decision, or legal entity which supported his position (RX 8 at 46). Mr. Castronovo testified he was first contacted by

Respondent to review Petitioner's report on 3/14/25 (RX 8 at 52). **Regarding the deposition at hand, Mr. Castronovo reviewed his emails and confirmed that he was first contacted by Respondent on 7/17/25 to schedule the 8/6/25 deposition (RX 8 at 59).** Despite testifying that he was of the opinion that Petitioner could return to her normal work duties, Mr. Castronovo acknowledged on cross examination that he did not have a job description, and his opinion was based upon an assumption, not a specific understanding as to Petitioner's work duties (RX 8 at 60). Accordingly, Mr. Castronovo admitted that his opinion that Petitioner could return to her prior job was not "within a reasonable degree of medical certainty" (RX 8 at 61). Finally, although he disagreed with the methodology used by ATI for the FCA, Mr. Castronovo acknowledged that there was no governing body in the state of Illinois which determines the proper FCA/FCE methodology (RX 8 at 61). Furthermore, although he cited the standards set forth by the American Physical Therapy Association as a basis for his opinions, Mr. Castronovo acknowledged that neither the state of Illinois nor the IWCC had adopted the standard set for by the American Physical Therapy Association (RX 8 at 62).

On cross, Mr. Castronovo acknowledged that he previously testified, under oath for another matter, that "the majority of FCE reports are unreliable (RX 8 at 56)." In fact, Mr. Castronovo admitted that he had never determined an ATI FCA was reliable and further acknowledged having testified that "every FCE from ATI is not good" (RX 8 at 69). In reviewing his business model, Mr. Castronovo charges \$1,350.00 per FCE report, performs 6-8 reports per month and charges \$400.00 per hour for his deposition (RX 8 at 45). Mr. Castronovo testified he was self-employed and 65% of his business consisted of FCE review reports (RX 8 at 43 & 44). Respondent's hired expert acknowledged that if he reviewed an FCE/FCA and found its study to be valid, Mr. Castronovo would not author a report and he would, therefore, generate less income (RX 8 at 51-52 & 55). Mr. Castronovo, ultimately, agreed that it was bad for business if he determined an FCE was valid (RX 8 at 55).

As of the date of arbitration, 9/23/25, Petitioner continued working at Supermarket El Paso and had not sought alternate employment (T. at 58 & 70). From her date of hire through 9/7/25, Petitioner earned \$15.00 per hour, worked 6 hours per day, 24-36 hours per week and earned a total of \$9,642.90 (PX 36 & T. at 58). Petitioner's duties at Supermarket El Paso included the stocking of products, cleaning of work areas, and assisting customers (T. at 59). Despite the light nature of her work duties, Petitioner noticed increased right shoulder and low

back pain rated a 5-6/10 after working a shift or repetitive shoulder activity (T. at 60-61). Petitioner made clear that she had no such symptoms prior to sustaining the work accidents on 9/15/23 & 12/13/23 (T. at 60). Petitioner also reported back pain going up to a 6/10 with prolonged sitting (T. at 62). Petitioner is right-handed and the right shoulder injury has also negatively impacted her activities of daily living (T. at 63). For example, she is unable to reach to the back of head to wash her hair and is unable to reach back with her right hand to properly clean herself after using the restroom (T. at 64). The pain and limitations from the injuries have taken an emotional toll on Petitioner (T. at 64)

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 is to evaluate witness credibility, evaluate 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). The Arbitrator took into account Petitioner's testimony and demeanor at arbitration and deemed her to be a hard-working credible witness.

With respect to the admission of Dr. Balaram's Addendum Report dated 1/10/25, the Arbitrator finds as follows:

Respondent sought to admit Dr. Balaram's addendum report in evidence as RX #1; this exhibit is rejected.

Section 12 of the Act indicates that a physicians' report must be provided no later than 48 hours before the start of a hearing and that, if the report is not disclosed, the examining physician will not be allowed to testify. *City of Chicago v. Workers' Compensation Commission*, 2008 WL 5382001 (Ill.App. 1 Dist.). Within the concurring opinion, Justice Gordon stated, "given its plain and ordinary meaning, a hearing begins when the parties start to present their arguments and evidence to the arbitrator." Id.

In the case at hand, this matter was scheduled for arbitration on 2/26/25. The record as a whole supports the conclusion that Respondent did not provide Petitioner the addendum report until 2/25/25 (See PX 40; PX 46 at 5; T. at 12). Respondent has provided no evidence to show that the addendum report was provided to Petitioner at any time prior. The parties appeared before the arbitrator, went on the record, and presented their arguments on 2/26/25. It is undisputable that Respondent failed to provide the addendum report within 48 hours of the scheduled arbitration. In any event, the arbitrator finds that this report in question is of very little probative value. In fact, this entire issue's relevance goes to the issue of penalties and fees.

With respect to causal connection, the Arbitrator finds as follows:

There is no dispute within the record as it pertains to causal connection between the work accident and Petitioner's lumbar condition of ill being. Accordingly, the Arbitrator finds Petitioner's lumbar condition is causally related to the work accident.

It is well-established law that proof of prior sound health and change immediately following and continuing after an injury may demonstrate that an impaired condition was due to the injury. Navistar International Transportation Corporation, 315 Ill. App. 3d 1197, 1206 (2000). The Court specifically stated that a causal connection between work duties and a condition may be established by a chain of events. This includes the Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. Id.

In the case at hand, the Petitioner's testimony regarding the chain of events is documented within the treating medical records and is undisputed. Prior to the 12/13/23 work accident, Petitioner was 44 years old with no prior history of lumbar pain (T. at 225). Petitioner

slipped and fell onto her back and immediately noted lumbar pain (T. at 30). Petitioner immediately sought care for lumbar injury (PX 2B at 3) and eventually underwent the lumbar MRI which showed a 2-3 mm posterior disk protrusion at L4/5 indenting the thecal sac with generalized bilateral neuroforaminal narrowing and a 4-5 mm posterior disk protrusion at L5/S indenting the thecal sac with generalized bilateral neuroforaminal narrowing (PX 2A at 410). Causal connection is supported as both Dr. Mekhail and Dr. Patel noted Petitioner's symptoms started immediately following the work accident and diagnosed lumbar radiculopathy (PX 4 at 3).

Petitioner eventually underwent an ESI which provided significant relief. Despite the care received, as of the date of arbitration, Petitioner continued experiencing ongoing lumbar pain with increased work and extended seating.

Respondent's IME expert, Dr. Balaram did not review the lumbar MRI and did not address the 12/13/23 lumbar injury. As was the case in Navistar, the chain of events in the case at hand demonstrate that Petitioner's health deteriorated from a state which allowed her to work without issue pre-accident, to a state of disability immediately following the undisputed work accident. For the aforementioned reasons, the Arbitrator finds Petitioner satisfied her burden of proof and established causal connection between the 12/13/23 work accident and her lumbar conditional of ill being.

With respect to the reasonableness and necessity of accrued medical, the Arbitrator finds as follows:

The Arbitrator finds the record as a whole to support a finding that all care rendered through the date of Arbitration was reasonable, necessary, and causally related to the work accident.

Pursuant to Section 8.7(i)(3) of the Act, once the utilization review process is invoked by Respondent, "An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section."

Respondent did not offer a Section 12 report or a UR report into evidence to deny the necessity of any of the lumbar care rendered. Taking into account the reliable opinions of

Petitioner's medical providers, Respondent's lack of defense, and the success of the lumbar care rendered, the arbitrator finds no basis for the denial of any of the outstanding medical bills submitted into evidence which relate to Petitioner's lumbar injury. The arbitrator acknowledges an overlap between the care for treatment related to Petitioner's right shoulder due to the 9/15/23 work accident and the treatment related for Petitioner's lumbar injury due to the 12/13/23 work accident. Ultimately, the arbitrator finds all care to be reasonable, necessary and causally related to each work accident. Accordingly, the arbitrator awards all medical bills submitted into evidence as PX 7 through PX19 and reduced per the fee schedule as PX 38. Accordingly, the arbitrator awards Petitioner \$78,185.23 in reasonable, necessary and causally related medical.

With respect to TTD benefits, the Arbitrator finds as follows:

The arbitrator does not award TTD benefits in relation to the 12/13/23 work accident. The arbitrator has already awarded TTD benefits in relation to the 9/15/23 work accident; thus, the issue is moot.

With respect to TPD benefits, the Arbitrator finds as follows:

The arbitrator does not award TPD benefits in relation to the 12/13/23 work accident. The arbitrator has already awarded TPD benefits in relation to the 9/15/23 work accident; thus, the issue is moot.

With Respect to permanency, the Arbitrator finds as follows:

The Arbitrator concludes that as a result of the 12/13/23 work accident, Petitioner sustained a 2-3 mm posterior disk protrusion at L4/5 indenting the thecal sac with generalized bilateral neuroforaminal narrowing and a 4-5 mm posterior disk protrusion at L5/S1 indenting the thecal sac with generalized bilateral neuroforaminal narrowing; causing lumbar radiculopathy (PX 2A at 410). Petitioner underwent an epidural steroid injection on 5/6/24 and was discharged, without restrictions, for the lumbar spine on 5/21/24 (PX 5 at 5, 7 10). As of the date of arbitration, 9/23/25, Petitioner acknowledged improvement with the care but still reported ongoing lumbar pain after working a full shift or after extended periods of time in a seated position (T. at 62). The Arbitrator thus concludes Petitioner suffered a 12.5% loss MAW under Section 8(d)2 of the Act.

Section 8.1(b) of the Act lays out the 5 criteria which must be weighed in determining the level of permanent partial disability to be awarded in accidents occurring after 9/1/11.

First, no impairment rating was offered by either party. Therefore, the Arbitrator gives no weight to Subsection i of Sec. 8.1b (b) of the Act.

Concerning subsection (ii) of Section 8.1b (b), the occupation of the employee, the record as a whole shows that Petitioner worked for Respondent as a food preparer/laborer. Upon undergoing the injection, Petitioner was returned to work at full duty for the lumbar injury. Although Petitioner was never provided her job back, the Arbitrator notes the lumbar injury did not prevent Petitioner from returning back to her prior occupation.

With regards to subsection (iii) of Section 8.1b (b), the Arbitrator notes that the Petitioner was 44 years old when the accident happened and was 46 years old at the time of arbitration.

Under subsection (iv) of Section 8.1b (b), Petitioner's future earning capacity, the Arbitrator notes Petitioner did not have restrictions and was technically capable of returning to her prior occupation. Although she reported ongoing pain, Petitioner was still capable of earning the same amount she did prior to the work accident.

In regard to subsection (v) of Section 8.1b (b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that there is no dispute within the records that the work accident caused a lumbar injury with lumbar radiculopathy. This is a significant injury which is not disputed by Respondent. Petitioner also reports ongoing symptoms as of the date of arbitration. The Arbitrator gives greater weight to this factor.

Based on the above factors and the record taken as a whole, the Arbitrator finds that the Petitioner sustained permanent partial disability to the extent of a 12.5% loss MAW under Section 8(d)2 of the Act.

With respect to penalties and attorney's fees, the Arbitrator finds as follows:

The arbitrator does not award additional penalties and attorney's fees in relation to the 12/13/23 work accident. The arbitrator has already awarded Section 16, 19(l) and 19(k) penalties and fees in relation to the 9/15/23 work accident; thus, the issue is moot.