

05 WC 30287

13IWCC1035

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STATE OF ILLINOIS

COUNTY OF COOK

) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
)

Ronald Bean,

Petitioner,

vs.

NO: 05 WC 30287
13IWCC1035

JC Penney,

Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

A Petition to Recall the Decision pursuant to Section 19(f) of the Illinois Workers' Compensation Act to correct a clerical error in the Decision and Opinion on Review of the Commission dated December 6, 2013, having been filed by the Respondent herein, and the Commission having considered said Petition, the Commission is of the opinion that the Petition should be granted.

IT IS THEREFOR ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated December 6, 2013, is hereby recalled pursuant to Section 19(f) for clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

DATED:

JAN 15 2014

RWW/lj

46



Ruth W. White

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <u>Choose reason</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>Up</u>	<input type="checkbox"/> PTD Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ronald Bean,
Petitioner,

vs.

NO: 05 WC 30287
13IWCC01035

JC Penney,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

In a January 18, 2013 Decision, the Arbitrator found that Petitioner was temporarily totally disabled from July 29, 2003 through April 12, 2005. We modify the Decision of the Arbitrator to award temporary total disability benefits through March 9, 2012. We find that Petitioner is entitled to temporary total disability benefits continuing after April 12, 2005 as he was restricted from work and undergoing the reasonable and necessary additional medical treatment awarded by the Arbitrator in a prior 19(b) Decision dated December 3, 2008. We find that a preponderance of the evidence shows that as of March 9, 2012 Petitioner was no longer temporarily totally disabled from employment.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to

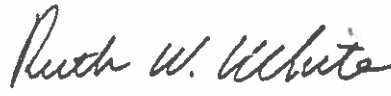
Petitioner the sum of \$1,012.01 per week for a period of 449 and 4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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.

DATED:
RWW/plv
o-10/9/13
46

JAN 15 2014



Ruth W. White



Charles J. DeVriendt



Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BEAN, RONALD

Employee/Petitioner

Case# 05WC030287

13 TWCC1035

JC PENNEY

Employer/Respondent

On 1/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

3078 GUMMERSON & RAUSCH LLC
JAMIE R WOMBACHER
101 S BENTON ST SUITE 201
WOODSTOCK, IL 60098

5074 QUINTAIROS PRIETO WOOD & BOYER PA
MICHAEL J SCULLY
180 N STETSON AVE SUITE 4525
CHICAGO, IL 60601

STATE OF ILLINOIS)
)
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RONALD BEAN
Employee/Petitioner

Case #05 WC 30287

v.

13IWCC1035

JC PENNEY
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on January 3, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. Was the 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 the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?

- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What temporary benefits are due: TPD Maintenance TTD?
- L. What is the nature and extent of injury?
- M. Should penalties or fees be imposed upon the respondent?
- N. Is the respondent due any credit?
- O. Prospective medical care?

FINDINGS


- A Corrected Section 19(b) and 8(a) decision was filed on December 3, 2008, after a hearing on September 29, 2008. The decision was not reviewed.
- In the year preceding the injury, the petitioner earned \$128,589.00; the average weekly wage was \$2,472.87.
- The parties agreed that the respondent paid \$99,737.21 in temporary total disability benefits, and \$254,849.77 in medical bills through its group medical plan.

ORDER:

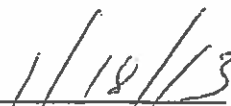
- The respondent shall pay the petitioner temporary total disability benefits of \$1,012.01/week for 89-1/7 weeks, from July 29, 2003 through April 12, 2005, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$550.47/week for a further period of 150 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 30% loss of use of the man as a whole.
- The respondent shall pay the petitioner compensation that has accrued from July 27, 2003, through January 3, 2013, and shall pay the remainder of the award, if any, in weekly payments.
- The medical care rendered the petitioner through March 9, 2012, was reasonable and necessary. The medical care rendered the petitioner after March 9, 2012, was not reasonable or necessary and is denied. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

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.



Robert Williams



Date

JAN 18 2013

FINDINGS OF FACTS:

After the Section 19(b) and 8(a) hearing on September 27, 2008, the petitioner sought psychological counseling with Patricia Merriman at Rush Pain Center and followed up approximately three times per year through April 14, 2011. Dr. Boland saw the petitioner on August 8, 2011, and opined that the petitioner was not capable of full-time employment even at the sedentary level. Video surveillance on March 9, 2012, of the petitioner revealed him walking briskly with a normal gait and without a limp or the use of a cane, stepping onto and off a curb without a change in his stride or pace and bending to approximately ninety degrees at his waist.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner through March 9, 2012, was reasonable and necessary. The medical care rendered the petitioner after March 9, 2012, was not reasonable or necessary and is denied.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being is partially causally related to the work injury.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner misled and deceived his medical providers regarding his symptoms, disability and his need for medical care and work restrictions. Dr. Matz opined after a Section 12 examination of the petitioner on April 12, 2005, that the petitioner was capable of working an eight-hour day desk job. The petitioner is entitled to temporary total disability benefits from July 29, 2003, through April 12, 2005. The respondent shall

pay the petitioner temporary total disability benefits of \$1,012.01/week for 89-1/7 weeks, from July 29, 2003, through April 12, 2005, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

Based upon the testimony, the petitioner's courtroom movements and the evidence submitted, the petitioner failed to prove that he is obviously incapable of employment or that he cannot perform any services except those which are so limited in quantity, dependability or quality that there is no reasonably stable labor market for them. The opinions of Drs. Lubenow and Boland, Patricia Merriman and Timothy Lalk are not consistent with the evidence. The petitioner was not truthful with his health care providers, Merriman and Lalk. The video surveillance of the petitioner and his courtroom activities clearly established that he has fewer problems, restrictions and difficulties with his lumbar spine than what he showed or conveyed to them. Moreover, the video surveillance of the petitioner walking briskly, naturally and unheeded without any difficulty prior to being informed of a surveillance and then limping, struggling to walk, stepping off a curb sideways and showing his knee giving away after being informed of the surveillance impugns his credibility and shows his intent to deceive by magnifying and feigning symptoms. It is clear the petitioner can perform some form of employment without seriously endangering his health or life. The petitioner is not believable or credible.

The respondent shall pay the petitioner the sum of \$550.47/week for a further period of 150 weeks, as provided in Section 8(d)2 of the Act. because the injuries

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sustained caused the permanent partial disability to petitioner to the extent of 30% loss of use of the man as a whole.