

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paul Outlaw,

Petitioner,

vs.

NO: 08 WC 24104

University of Illinois at Chicago,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated March 14, 2014, having been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 14, 2014 is hereby vacated and recalled pursuant to Section 19(f) for a 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.

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: **APR 02 2014**
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Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
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 type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PAUL B. OUTLAW,

Petitioner,

vs.

NO: 08 WC 24104
14 IWCC 177

UNIVERSITY OF ILLINOIS AT CHICAGO,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW
UNDER SECTIONS 8(A), 16, 19(K) AND 19(L)

This cause comes before the Commission on Petitioner's Sections 8(a), 16, 19(k) and 19(l) petition, filed on January 16, 2013. A hearing on Petitioner's petition was held by Commissioner Tyrrell on February 20, 2013. The issues under Petitioner's petition were whether Petitioner is entitled to prospective medical care and whether Petitioner is entitled to penalties and attorneys' fees. The Commission, after having considered the record, hereby finds that Petitioner is entitled to prospective medical care, penalties and attorneys' fees. Petitioner's Sections 8(a), 16, 19(k) and 19(l) petition is granted.

FINDINGS OF FACT

Petitioner worked as an electrician for Respondent. On May 8, 2008, it was stipulated that he sustained an accident when he was struck by a bus and suffered a right rotator cuff tear injury, which was operated on two months later. Petitioner eventually returned to work with an irreparable massive rotator cuff tear and with significant restrictions. On March 2, 2009, Dr. Goldberg gave Petitioner permanent restrictions of no lifting, pushing or pulling over 30 pounds and no overhead work, specifying that Petitioner's work should be performed at the shoulder level or below.

The Arbitrator heard Petitioner's case on March 1, 2010. The Arbitrator found Petitioner's condition of ill being was causally connected to the work accident and awarded Petitioner a wage differential beginning on March 1, 2010, because the injuries sustained caused a loss of earnings, and medical bills per the fee schedule as submitted by Petitioner at the hearing. The Arbitrator's decision was not appealed. Petitioner returned to work for Respondent after the hearing and worked until he retired on May 1, 2010.

Petitioner testified about his worsening right shoulder condition on February 20, 2013. Since Petitioner last testified, he said he always has right shoulder pain. Moreover, Petitioner testified that his right shoulder has deteriorated since he last saw Dr. Goldberg. Petitioner testified he feels pressure on the area where his doctors previously attempted to surgically repair his shoulder and added the pressure is getting worse. He explained that it feels like something in the shoulder is pushing down on the nerve or tissue on the top of his right shoulder. Petitioner also began experiencing pains he described as "electrical shocks" around March 2012. He was not working at that time. Petitioner explained it feels like he gets electric shocks that go from his shoulder down to his wrist and fingers. Petitioner explained he did not pay attention to the shock sensations until he realized they were not going away. These shocks are intermittent but became more prevalent in the months before the February 2013 hearing. Petitioner testified that he experiences the shocks depending on how he moves his arm. Petitioner explained that when he tries to lift his right arm away from his body up to 90 degrees, he cannot hold his arm there long, he has to bring it down and then he experiences a tingling sensation. Petitioner described the tingling sensation as going down his right arm to his wrist and occurs immediately.

Petitioner last saw Dr. Goldberg in March 2009 and did not seek treatment for his right shoulder from March 2009 through November 2012. Dr. Goldberg initially treated Petitioner for his injury in 2008. He had previously diagnosed Petitioner with an irreparable chronic rotator cuff injury. Petitioner testified that in November 2012 he made an appointment with Dr. Goldberg for the electric shocks he was experiencing. Respondent authorized that appointment. Petitioner saw Dr. Goldberg on November 9, 2012. Dr. Goldberg again diagnosed Petitioner with an irreparable chronic rotator cuff injury, gave Petitioner the same work restrictions, and ordered an MRI. Respondent approved the MRI, which Petitioner had on November 21, 2012. The MRI findings included new thickening of the inferior glenohumeral ligament that can be seen with adhesive capsulitis. Petitioner returned for a second appointment with Dr. Goldberg on November 26, 2012, to review the MRI. Dr. Goldberg noted that he was worried about a possible outbreak of plexus compression and prescribed an EMG of the right upper extremity. Petitioner had the EMG on December 21, 2012, which Respondent authorized. Petitioner testified that he scheduled a third appointment to see Dr. Goldberg for January 2013.

Petitioner went to the appointment; however, he was told he could not see Dr. Goldberg because Respondent had not approved it. Respondent authored a letter on January 29, 2013, stating that it was denying further medical treatment as there was no medical evidence that Petitioner's continued shoulder complaints were causally connected to the May 2008 accident.

Petitioner testified that he would like to continue to treat with Dr. Goldberg.

CONCLUSIONS OF LAW

The Commission concludes that Petitioner's current condition in his right shoulder and his need for additional treatment as recommended by Dr. Goldberg is causally related to the work accident he sustained on May 8, 2008. We find that Petitioner sustained his burden of proof under Section 8(a) that his right shoulder symptoms worsened. The Commission further awards Petitioner penalties and attorneys' fees under Sections 19(k), 19(l) and 16.

The Commission holds that Petitioner is entitled to prospective medical treatment for his right shoulder condition. Petitioner credibly testified that he continues to experience pain in his right shoulder from his irreparable rotator cuff tear since the injury. Petitioner testified that he is still restricted in how he can move his shoulder and how much weight he can lift. Petitioner's condition then deteriorated further. He now feels a pressure on the top of his right shoulder, the area previously operated on. Petitioner explained it feels like something is pushing down on his nerve or tissue. Additionally, his pain increased around March 2012 when he began experiencing electrical shock sensations that travelled from his shoulder, down his arm to his hand. The shocks became more prevalent and did not abate, so Petitioner sought additional medical treatment from the same physician, Dr. Goldberg, for his worsened condition. Petitioner did not suffer an intervening injury and his right shoulder condition was previously found to be causally connected to the work related injury on May 8, 2008.

Further, when Petitioner sought additional medical treatment for these new right shoulder issues, Respondent initially authorized follow up treatment with Dr. Goldberg. Petitioner underwent the testing procedures prescribed and is waiting for further approval to follow up with Dr. Goldberg. Respondent cannot initially authorize treatment, and then later refuse to pay for the previously authorized treatment provided and necessary follow up. Petitioner proved that his condition has worsened and he is entitled to additional medical treatment as prescribed by Dr. Goldberg for his right shoulder irreparable rotator cuff tear.

We also award Petitioner penalties and attorneys' fees. It is well established that the imposition of Section 19(k) penalties and Section 16 attorney's fees is discretionary, and that they are assessed when the delay of payment is deliberate or results from bad faith or improper purpose. McMahan v. Industrial Comm'n, 183 Ill. 2d 499, 515, 703 N.E.2d 545, 553 (1998); Mechanical Devices v. Industrial Comm'n, 344 Ill.App.3d 752, 766, 800 N.E.2d 819, 829 (2003). Section 19(l) penalties are in the nature of a late fee, and "the statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.'" McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 552. See also Mechanical Devices, 344 Ill.App.3d at 763, 800 N.E.2d at 829. If the employer or its insurance carrier cannot show an adequate justification for its delay, additional compensation under Section 19(l) is mandatory. McMahan, 183 Ill. 2d at 515, 702 N.E.2d at 552; Mechanical

Devices, 344 Ill.App.3d at 763, 800 N.E.2d at 829.

The Commission finds that Respondent's actions were unreasonable and vexatious in this case. Respondent initially authorized Petitioner to seek additional medical treatment with Dr. Goldberg. Petitioner had two appointments with Dr. Goldberg in November 2012. Dr. Goldberg's note states that he is seeing Petitioner for his ongoing complaints for his right shoulder from the May 8, 2008, work injury. Respondent also authorized the MRI and EMG tests ordered by Dr. Goldberg. However, Respondent later refused to pay for the testing it had previously authorized. Respondent then refused to authorize and pay for additional medical treatment for Petitioner.

Before undergoing additional tests, Petitioner sent Respondent a letter on November 28, 2012, requesting authorization and payment for the MRI and EMG. Petitioner asked Respondent to provide a written reason if treatment was being denied. However, Respondent did not respond until January 29, 2013, after the services were authorized, charges incurred and then payment for the same summarily denied by Respondent. Respondent's actions put Petitioner in the position of being potentially liable for expensive medical treatment that Respondent previously authorized and then months later decided to not pay for. We hold that Respondent acted in an unreasonable and vexatious manner, and Petitioner is entitled to penalties and attorneys' fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Section 8(a) petition for prospective medical treatment for his right shoulder as recommended by Dr. Goldberg is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all medical expenses incurred by Petitioner for treatment for his work related injury under Section 8(a) and pursuant to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for penalties under Section 19(k) and Section 19(l) and attorneys' fees under Section 16 is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$2,216.50 pursuant to Section 19(k) without further delay.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$4,590.00 pursuant to Section 19(l) without further delay.

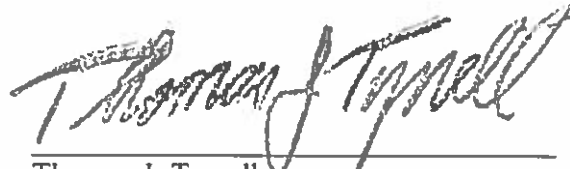
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$1,361.30 in attorney's fees pursuant to Section 16 without further delay.

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

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

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

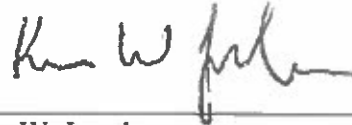
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Thomas J. Tyrrell



Daniel R. Donohoo



Kevin W. Lamborn