STATE OF ILLINOIS)BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Donald Bray,

Petitioner,

vs. NO. 12 WC 10132

Star Contractor Supply, Inc.,

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 January 21, 2014, having been filed by Petitioner. 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 dated January 21, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Orders to Commissioner Mario Basurto.

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

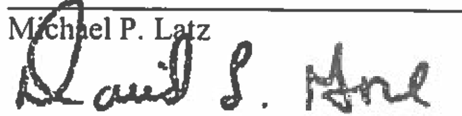
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to file for Review in Circuit Court.

DATED: APR 1 7 2014

Mario Basurto

MB/mam
43

Michael P. Latz



David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,
Petitioner,

vs. NO: 12 WC 10132
14IWCC0028

Star Contractor Supply, Inc.,
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 accident, causation, notice, average weekly wage and prospective medical care and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds Petitioner failed to provide proper notice to Respondent under Section 6(c) of the Act but that the time period for providing notice was tolled by Section 8(j) of the Act and proper notice was given under Section 8(j) of the Act.

The Commission notes that Petitioner's firm has indicated that the Arbitrator's decision contains internal contradictions regarding the date of accident. Petitioner contends that specifically the Arbitrator listed both January 13, 2011 and July 30, 2011 as the accident date. In reviewing the Arbitrator's decision, the Commission finds that the Arbitrator listed two separate dates for the date of accident in the decision. However, the dates of accident stated in the Decision are August 30, 2011 and January 13, 2011. The Commission finds that only a January 13, 2011 accident date should have been contained in the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall authorize the surgery recommended by Dr. Ortinau and Respondent shall pay all reasonable and necessary prospective medical expenses related to Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for a determination of further temporary total disability, if any, or of compensation for permanent disability pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 322 (1980).

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

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

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

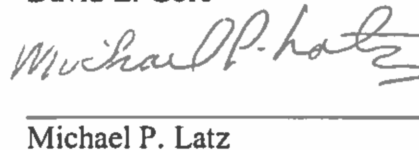
DATED: APR 1 7 2014

Mario Basurto

MB/jm

David L. Gore

O: 12/12/13



Michael P. Latz

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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BRAY, DONALD
Employee/Petitioner

Case# **12WC010132**

14IWCC0028

STAR CONTRACTOR SUPPLY INC
Employer/Respondent

On 5/15/2013, 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 0.08% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
MICHAEL MOORE
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Donald Bray
Employee/Petitioner

v.

Star Contractor Supply, Inc.
Employer/Respondent

Case # 12 WC 10132

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 **Deborah Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **February 1, 2013**. 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. [X] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. [X] What was the date of the accident?

E. [X] Was timely notice of the accident given to Respondent?

F. [X] Is Petitioner's current condition of ill-being causally related to the injury?

G. [X] 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. [X] Is Petitioner entitled to any prospective medical care?

L. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other ______

14IWCC0028

FINDINGS

On the date of accident, **July 30, 2011**, 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 **$44,560.00**; the average weekly wage was $895.38.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

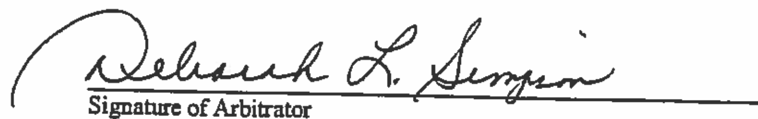
ORDER

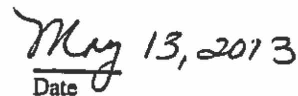
- Respondent shall authorize the surgery recommended by Dr. Ortinau.
  Respondent shall pay the costs of the medical treatment pursuant to the Act.

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

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

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


Signature of Arbitrator


Date

ICArbDec19(b)

MAY 15 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 10132**
	)	
Star Contractors,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on August 30, 2011 the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner reported to the Respondent that he had suffered a repetitive trauma injury resulting in bilateral carpal tunnel syndrome and that the injury arose out of and in the course of the Petitioner's employment with the Respondent.

At issue in this hearing is as follows: (1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent; (2) What is the date of the accident; (3) Was timely notice of the accident given to the Respondent; (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage; (6) Were the medical services that were provided to the Petitioner reasonable and necessary? Has the Respondent paid all appropriate charges for all reasonable and necessary medical services; and (7) Is the Petitioner entitled to any prospective medical care?

STATEMENT OF FACTS

This case involves bilateral carpal tunnel syndrome ("CTS") which the Petitioner alleges was caused by repetitive activity while he was working for the Respondent. The attorneys for the parties completed and signed a Request For Hearing Form, which was admitted into evidence without objection as Arbitrator Exhibit #1.

The Arbitrator notes that in his Application the Petitioner alleged a date of accident of October 5, 2011. The Petitioner later filed an Amended Application in which he alleged a date

of accident of July 29, 2011. At the February 1, 2013, hearing of this case, the Petitioner asked for leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011, the Respondent did not object and leave to amend was granted.

The Petitioner testified that he worked for the Respondent for about ten and one half years. He testified that at first he was employed as a welder for about three years, then he was promoted to shop supervisor or foreman, with assignment and supervisory duties. At that time he did not perform welding or door frame building on a regular basis. He testified further that for the last five to six years he has been a working foreman because the Respondent has systematically laid off individuals due to lack of work until they were down to the Petitioner and one other welder. The Petitioner stated that for the past five to six years the majority of his responsibilities has been welding and making door frames. He testified that he was laid off due to lack of work in December of 2011, and that about 1 month later the Respondent went out of business. He testified that the Respondent made metal door frames and metal doors.

The Petitioner testified that, except at the very end, he worked 8 hours a day 5 days a week for the Respondent during its last 5 to 6 years of operation. He testified that as the business slowed down in 2011, he sometimes only worked three or four days each week.

In describing his work day and responsibilities the Petitioner testified that while working as a working supervising foreman he would fabricate four door frames each hour. The Arbitrator notes that this corresponds to building one door frame every fifteen minutes. He testified that the door frame came in three pieces and that he and an assistant would put the frame onto a welding table to assemble it. He testified that he would first have to hit the frame with a hammer to make the frame tight, and then he would flip it over and do the same thing to the other side of the frame. The Petitioner testified that he was left-handed and that 80% of the time he held the hammer in his left hand and 20% of the time he held the hammer with his right hand. He testified that he spent about ten minutes hammering each door frame together. The Arbitrator notes that using a hammer ten minutes per door frame would account for forty minutes of every hour leaving the Petitioner only twenty minutes or five minutes per door frame to do all of the other tasks necessary to make a door frame.

The Petitioner testified that the next step in the door frame building process was to use a grinder to grind off the exposed rough surfaces. He testified that he would hold the grinder with both hands and move the grinder back and forth over the area that needed to be smoothed out. He demonstrated for the Arbitrator and the attorneys that he used the grinder in a downward angle of approximately 45 degrees. He testified that while using the grinder he felt vibration in his hands. He testified that he spent 45 minutes of each hour, or 11.25 minutes per door, using the grinder. Eighty-five minutes for four doors at this point.

The Petitioner testified that after grinding off the exposed rough surfaces he uses a welding unit to weld the pieces of the door frame so that the frame was tight. He used a MIG welder for this task. He stated that he welded with his left hand 100% of the time. He testified that during the hour in which he would fabricate four door frames he spent ten minutes of that time welding, which breaks down to 2.5 minutes of welding time for each door. The Petitioner testified that after the welding was done he would use the grinder again to smooth out any sharp edges. At this point we are at ninety-five minutes for the four doors.

According to the Petitioner's testimony it took the Petitioner 23.75 minutes to perform all of the individual tasks needed to assemble one door frame. This explanation did not include time to get the pieces and put them up on the table for assembly or to remove the completed door frame and put it wherever finished product was taken to next.

The Petitioner testified that at some point he began to notice that his hands would go numb while he was doing the grinding. He testified that he would shake his hands to get the numbness to stop. He thought his symptoms might be related to his work duties, but he was not sure. He sought medical treatment with his family doctor, Dr. George Georgiev at the Ottawa Regional Medical Center in 2011. Dr. Georgiev diagnosed carpal tunnel syndrome.

He testified that the second time he saw Dr. Georgiev for carpal tunnel syndrome that the doctor referred him to an orthopedic specialist at Rezin Orthopedics. He then called Rezin Orthopedics to schedule an appointment and was asked if his condition was related to his work. When he responded in the affirmative, he was told that he would have to have treatment authorized under workers' compensation. He then called the owner of Star Contracting, Alan Feldman, and reported this information to Mr. Feldman. Mr. Feldman asked Mr. Bray to see if he could obtain medical treatment under his group health insurance. When he told Mr. Feldman that they would not treat him under his group insurance, Mr. Feldman told him that he would call the doctor's office and find out. Mr. Feldman was not successful. Mr. Bray said he then completed paperwork to make a workers' compensation claim.

The medical records from Ottawa Regional Medical Center show that Petitioner became a new patient on January 13, 2011 and presented with a history of hyperlipidemia and hypertension. Dr. Georgiev performed a full exam of the skin, head, neck, eyes, ears, nose, throat, chest and lungs, cardiovascular system, abdomen, genitourinary, rectal, vascular, neurological, and musculoskeletal systems. This exam did include positive carpal compression tests and Tinel's signs. The doctor diagnosed hyperlipidemia, hypertension, COPD, benign hypertrophy of the prostate, osteoarthritis, back pain, and carpal tunnel syndrome. The recommendation for the carpal tunnel syndrome was for vitamins B1, B12, and C. (P. Ex #1).

The records also show that the Petitioner returned to see Dr. Georgiev on February 6th, March 18th, and May 2nd of 2011. There is no evidence that carpal tunnel was discussed or treated at these visits. On July 30, 2011, the Petitioner saw Dr. Georgiev for management of valvular heart disease. At that time the Petitioner told the doctor that his carpal tunnel was ~~getting worse,~~ that he was experiencing "burning fire like pains" in his hands at night and during the daytime when he was hammering. The doctor recommended he wear wrist splints and to consider physical therapy if he did not improve in two or three weeks. (P. Ex. #1).

On August 30, 2011, Petitioner returned to see Dr. Georgiev regarding his low back pain, and he also told the doctor that the wrist braces had not worked and there was no change in his symptoms. According to Dr. Georgiev, he did not want to undergo physical therapy but wanted a fix. Dr. Georgiev agreed to refer him to an orthopedist but wanted to wait until an MRI was done on his back so the orthopedist could also review that. On September 26, 2011, Dr. Georgiev stated he would refer Petitioner to an orthopedist for back pain and for carpal tunnel syndrome. (P. Ex. 1).

The records from Rezin Orthopedic Center show that Petitioner first saw Dr. Ortinau on October 20, 2011. A Referral Request form from Ottawa Regional Medical Center dated September 26, 2011 shows the reason for the referral to be bilateral carpal tunnel syndrome and degenerative joint disease in the thoracic and lumbar spine. A handwritten statement on the top of this form states: "9-30-11 patient said it is work related has not started a claim at work. Told patient we could not see him until he starts w/c process and gets approval. Patient stated he will call back." (P. Ex. 2).

On October 20, 2011, Dr. Ortinau diagnosed Petitioner with bilateral carpal tunnel syndrome and prescribed braces and anti-inflammatory medication. On November 17th, Dr. Ortinau again prescribed anti-inflammatories and ordered an EMG/NCV. On December 2nd, these neurodiagnostic studies revealed the presence of moderate carpal tunnel syndrome bilaterally. On December 8, 2011, Dr. Ortinau recommended surgical carpal tunnel release on the left hand followed by the right hand two to three weeks later. (P. Ex. 2).

Respondent had Petitioner examined by Dr. Michael Vender on January 19, 2012. According to Dr. Vender's report, Petitioner had a history of numbness and tingling in his hands and local discomfort which began six months earlier, and this had progressed since November or December 2011. Petitioner reported a burning sensation diffusely in his fingers greater on the right hand than the left. Dr. Vender noted that the electrodiagnostic studies demonstrated bilateral carpal tunnel syndrome. Dr. Vender felt it would be reasonable to proceed with surgery. Dr. Vender noted that Petitioner described a use of hammers and grinders, but opined that it was not clear how persistent or frequent these activities were. (R. Ex. 2).

Subsequently, on February 13, 2012, Dr. Vender issued a letter which stated that he reviewed a job description described as "Hollow Metal Shop Supervisor" which described the job as 25% putting stock away, 25% designating work to others, 25% monitoring inventory, and 25% welding frames. Dr. Vender concluded that Mr. Bray did not perform forceful activities on a regular and persistent basis and stated that his work activities would not contribute to the development of bilateral carpal tunnel syndrome. (R. Ex. 3). According to the undisputed testimony of the Petitioner, in 2011 and 2012, he was a working supervisor, spending the majority of his day making door frames as there were only two welders working for the Respondent, the Petitioner and another individual. It appears that the conclusions of Dr. Vender are not based upon an accurate account of the position that Petitioner was working in 2011 and the early part of 2012.

Dr. Ortinau issued a report regarding Petitioner's condition on June 15, 2012. Dr. Ortinau felt that Petitioner's carpal tunnel syndrome was related to his work duties of welding door frames, hammering door frames, and using hand grinders and buffers for eight hours per day. (P. Ex. 3).

CONCLUSIONS OF LAW

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the

employee can no longer perform work activities. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 72, 862 N.E.2d 918 (2006).

An employee who suffers a repetitive trauma injury must meet the same standard of proof under the Act as an employee who suffers a sudden injury. See *AC & S v. Industrial Comm'n*, 304 Ill.App.3d 875, 879, 710 N.E.2d 837 (1st Dist. 1999)

An employee suffering from a repetitive trauma injury must still point to a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Williams v. Industrial Comm'n*, 244 Ill.App.3d 204, 209, 614 N.E.2d 177 (1st Dist. 1993)

When the injury manifested itself is the date on which both the fact of the injury and the casual relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524 505 N.E.2d 1026 (1987).

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. *City of Rockford v. Industrial Commission*, 214 N.E.2d 763 (1966) The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. The Workers Compensation Commission*, 870 N.E.2d 821 (2007)

(1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent? And (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure?

Petitioner's work as a welder required him to constantly work with his hands while welding door frames. His unrebutted testimony shows that he frequently grasped tools such as a hammer, a power grinder, and a welding gun. His grinding and buffing with the power grinder also exposed him to vibration on a frequent basis. He used these tools constantly while welding steel frames over the course of his eight-hour work day. Although the Petitioner testified that he made four frames per hour, and in breaking down how much time it took for each task he described a 95 minute time frame for assembling four doors, the unrebutted testimony of the Petitioner is that a majority of the time he is using the grinder to either grind or buff the frame, exposing him to a significant amount of vibration in his arms and hands each day.

The Arbitrator adopts the opinion of Dr. Ortinau that Petitioner's carpal tunnel syndrome is causally related to his work for Respondent. The Arbitrator rejects the opinion of Dr. Vender, who relied upon a job description that the Petitioner would only engage in welding for 25% of his work day and spent the rest engaged in supervisory duties. The evidence at trial demonstrated that Petitioner was only one of two welders left working for Respondent and spent his day welding, and using vibrating tools.

Based upon the above, the Arbitrator finds that the Petitioner's current condition of ill-being, namely his bilateral carpal tunnel syndrome, is causally connected to an accident which arose out of and in the course of his employment.

(2) What is the date of the accident?

The Arbitrator notes that in his Application petitioner alleged a date of accident of October 5, 2011. Petitioner later filed an Amended Application in which he alleged a date of accident of July 29, 2011. At the February 1, 2013, hearing of this case, petitioner was granted leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011.

Petitioner testified that in 2011 while using a grinder his hands would get numb and that he would have to "shake them" out before this numbness would subside. Petitioner testified that after this numbness did not go away he saw Dr. Georgiev for this problem, and that Dr. Georgiev told him that he probably had carpal tunnel syndrome. Petitioner testified that he was not sure when this took place, but that he thought that it was in June or July of 2011. The Arbitrator notes that the medical records evidence that Dr. Georgiev saw the Petitioner for the first time, as a new patient on January 13, 2011, conducted a complete physical examination and diagnosed Petitioner with bilateral CTS at that time. On January 13, 2011, he prescribed vitamins for treatment of the CTS. Petitioner first testified that he knew, and later testified that he suspected, that his bilateral CTS was work-related when it was diagnosed by Dr. Georgiev.

In *Peoria County*, the Illinois Supreme Court held that determining the manifestation date is a question of fact and that the onset of pain and the inability to perform one's job are among the facts which may be introduced to establish the date of injury. The Illinois Supreme Court in *Peoria County* determined that the manifestation date/date of accident in that case was the date that petitioner's pain, numbness, and tingling in her hands and fingers was so severe that she sought medical treatment.

The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee. *Durand*, 224 Ill.2d at 72. A formal diagnosis, of course, is not required. Id. In *General Electric Company v. Industrial Comm'n*, 190 Ill.App.3d 847, 857, 546 N.E.2d 987 (4th Dist. 1989), the appellate court held that the employee's injury and its connection to her employment would have been plainly apparent to a reasonable person on the date she noticed a "sharp pain" in her shoulder while working, not on the subsequent date when a physician opined that the employee's condition and her work were causally related.

In *Consuelo Castaneda v. Industrial Comm'n*, 231 Ill.App.3d 734, 596 N.E.2d 1281 (3rd Dist. 1992), the petitioner first began noticing hand problems in April 1985 when performing wiring and soldering for the respondent. On April 26, 1985, the petitioner saw Dr. Subbiah complaining of numbness in the hands and told Dr. Subbiah that she related her symptoms to work. The petitioner missed some work and then returned to work and continued to complain of soreness and stiffness of her wrists and hands until June 19, 1987, when her position was discontinued and she was unable to perform other positions offered because of her hand condition. On September 8, 1988, Dr. Delacruz issued a neurological report indicating right CTS. The petitioner filed her claim with the Industrial Commission on September 26, 1988. The arbitrator found that the petitioner's manifestation date/date of accident was June 19, 1987, and awarded benefits. The Commission reversed the arbitrator, finding that the Petitioner's injury had manifested itself on April 26, 1985, and that the petitioner's claim filed on September 26, 1988, was barred by the three-year statute of limitations. The Circuit Court and the Appellate Court affirmed the Commission's decision.

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the employee can no longer perform work activities. *Durand.*

In the instant case, Petitioner's bilateral CTS never progressed to the point that he was no longer able to perform his work activities; in fact, Petitioner was kept on full duty by his treating physicians even after they diagnosed Petitioner with bilateral CTS. Petitioner testified that he first noticed CTS symptoms in 2011 when he had numbness in his hands while using a grinder, and that he saw Dr Georgiev for this. Petitioner sought medical treatment from Dr. Georgiev for the first time on January 13, 2011, when the CTS was first diagnosed. On January 13, 2011, when Petitioner was seen by Dr. Georgiev, it was as a new patient. Dr. Georgiev conducted a complete physical examination and as part of his notes he diagnosed petitioner with bilateral CTS at that time, the only treatment recommended was B vitamins. It is not clear from the medical notes whether the Petitioner made any complaints about symptoms relating to his hands at the time. The medical records show several appointments with Dr. Georgiev and Petitioner between the January 13, 2011, visit and the July 30, 2011, visit wherein it is documented that Petitioner is complaining about the pain and numbness in his hands.

Petitioner admitted that he "knew" that his CTS were work-related when Dr. Georgiev diagnosed him with it. He later testified that he just "suspected" his CTS was work-related when Dr. Georgiev first diagnosed him with it.

Based upon the testimony and the evidence admitted at trial, the Arbitrator finds that January 13, 2011, is the "manifestation date," and thus the date of accident, for Petitioner's bilateral CTS. On that date Dr. Georgiev gave petitioner a complete physical examination, Dr. Georgiev performed tests on Petitioner for bilateral CTS, the tests were positive bilaterally, and Dr. Georgiev diagnosed Petitioner with paresthesia and bilateral CTS. The Arbitrator notes that petitioner testified that he at least suspected, if not knew, when he was diagnosed with bilateral CTS on January 13, 2011, that it was work-related.

(3) Was timely notice of the accident given to the Respondent?

The Arbitrator finds that petitioner's January 13, 2011, manifestation date/date of accident for his bilateral CTS would require Petitioner to notify Respondent by February 27, 2011, that he had bilateral CTS and that it was work-related. At trial Petitioner and Respondent stipulated that Petitioner first reported his alleged work accident to respondent on August 30, 2011. Consequently, the Arbitrator finds that petitioner did not report the January 13, 2011, work accident to respondent within the 45 days required by the Act.

In the instant case, the Petitioner notified the Respondent of the injury roughly seven months after the time required by the Act. Unlike the Petitioner in *Castaneda*, whose notification was made after the statute of limitations on the injury ran, the Petitioner in this case notified the Respondent within the statute of limitations for the injury. The courts have consistently applied the notification requirement liberally (*S&H Floor Covering)*. Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)*

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. (*City of Rockford)*. The Respondent did not provide any evidence that they were prejudiced in any way by the defect in notice. The unrebutted testimony of the Petitioner is that the owner of the company actually tried to get the doctor's office to bill the group insurance rather than making it a worker's compensation case but was unable to do so. A court should decline to penalize an employee who diligently worked through progressive pain until it affected his or her ability to work and required medical treatment. (*Durand*) Absent a showing that the Respondent was unduly prejudiced, the timing of the notice given by the Petitioner is not a bar to receiving benefits.

Additionally, the Arbitrator notes that Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Although the bills from Rezin Orthopedics were paid by Respondent under its workers' compensation plan (P. Ex. 2), the bills from the Ottawa Regional Medical Center were paid under Respondent's group health policy with Blue Cross (P. Ex. 1). According to the bills from the Ottawa Regional Medical Center, Petitioner's appointment with Dr. Georgiev on July 29, 2011 was paid by Blue Cross on August 10, 2011, the visit on August 30, 2011 was paid by Blue Cross on September 13, 2011, and the appointment on September 26, 2011 was paid by Blue Cross on October 12, 2011.

Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational

disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Based upon the above, the last payment by Respondent's group health plan was October 12, 2011. This is the date that Petitioner's 45 day period to provide notice began to run under Section 8(j) of the Act. The 45 day period would end on November 26, 2011. His first appointment with Dr. Ortinau was on October 20, 2011. Given his testimony that he had to report his condition as work related and have his appointment with Dr. Ortinau pre-approved under workers' compensation before he could see Dr. Ortinau, it is clear that he provided notice within the time required under Section 6(c) and Section 8(j).

(5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage?

The Petitioner failed to provide any evidence of his earnings during the year prior to his injury, based upon his proposed injury date of July 29, 2011 or July 30, 2011 or for any time before or after the injury.

The Respondent maintains that the Petitioner's date of injury was January 13, 2011, however the information provided by the Respondent regarding the Petitioner's pay begins approximately in September of 2010, (R. Ex. 1, which cuts of the number corresponding to the month the check was recorded) and goes through 9/29/11, rather than beginning in January of 2010 and ending in January of 2011, which would corresponds to the Respondent's proposed date of injury.

The Petitioner did testify that up until the last few months of 2011, when business started slowing down, he worked five days per week. R. Ex. 10 shows that from September 2010 until January of 2011, the Petitioner worked 80 hours and received $1940.00 for the time period. There were 80 hour work periods during 2011, wherein the Petitioner received $1940.00, as well. Assuming that rate of pay for the whole year before January 13, 2011, the Petitioner earned $46,560.00. The average weekly wage would be $895.38.

(6) Were the medical services that were provided to the Petitioner reasonable and necessary? Has the Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner failed to provide any evidence of unpaid medical bills. The Respondent entered a general denial of liability for any medical bills. Consequently no medical bills are awarded at this time.

(7) Is the Petitioner entitled to any prospective medical care?

Dr. Ortinau has recommended Petitioner undergo surgery to treat his bilateral carpal tunnel syndrome. Dr. Vender agrees that is reasonable for Petitioner to undergo surgery, although he disagrees as to the issue of causation.

Having found in Petitioner's favor on the issue of causation and notice, the Arbitrator therefore finds that Petitioner is entitled to prospective medical care.

ORDER OF THE ARBITRATOR

The Arbitrator therefore orders Respondent to authorize Petitioner's surgery with Dr. Ortinau of Rezin Orthopedics and to pay the costs of the medical treatment pursuant to the Act.

Deborah L. Simpson
Signature of Arbitrator

May 13, 2013
Date