

11 WC 45452
11 WC 47249
14 IWCC 487
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leroy Booker,

Petitioner,

vs.

NO: 11 WC 45452
11 WC 47249
14 IWCC 487

PACE SUBURBAN BUS,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

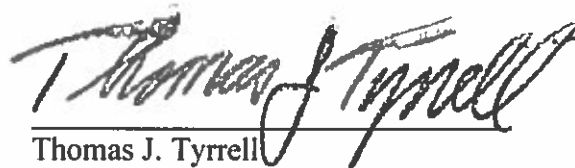
Pursuant to Section 19(f) of the Act, the Commission finds that a clerical error exists in its Decision and Opinion on Review dated June 19, 2014, in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated June 19, 2014, is hereby vacated and 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.

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: JUL 01 2014
TJT:yl
51


Thomas J. Tyrrell

STATE OF ILLINOIS)	<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
) SS.	<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
COUNTY OF COOK)	<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
	<input checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
		<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEROY BOOKER,

Petitioner,

vs.

NO: 11 WC 45452
11 WC 47249
14 IWCC 487

PACE SUBURBAN BUS,

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 issue of the nature and extent of the Petitioner's injuries, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Upon reviewing the Arbitrator's permanency award in this matter the Commission finds that Petitioner sustained the loss of use of 17.5% of the man as a whole under Section 8(d)(2) of the Act. This is based on a lumbar/left hip strain (2.5% of the man as a whole), a right shoulder SLAP tear with surgery (10% of the man as a whole), and a left shoulder strain (5% of the man as a whole). Pursuant to Will County Forest Preserve District v. Illinois Workers Compensation Commission, 2012 Ill.App. (3d) 110077WC, 90 N.E2d 16 (2012), permanent injuries to the shoulder are no longer considered to be percentages of loss of the arm, but rather as percentages of loss of the man as a whole. It should be noted that there is evidence in the record indicating that each of these conditions was superimposed on a preexisting condition. He has returned to his regular job, but testified he does have to request assistance sometimes with heavy lifting.

11 WC 45452
11 WC 47249
14 IWCC 487
Page 2

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$492.00 per week for a period of 87.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the permanent loss of 17.5% of the man as a whole, as described above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the causally related medical expenses incurred by Petitioner with regard to his low back/left hip and bilateral shoulders pursuant to §8(a) of the Act, and subject to the fee schedule contained in §8.2 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 injuries; this includes credit for payments made under §8(j) of the Act, provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under §8(j).

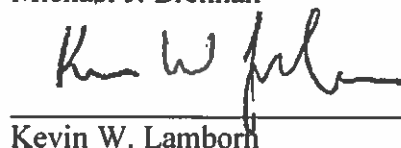
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$46,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 01 2014
TJT: pvc
o 5/6/14
51


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BOOKER, LEROY

Employee/Petitioner

Case# **11WC045452**

11WC047249

PACE

Employer/Respondent

14IWCC0487

On 12/18/2013, 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 0.09% 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:

0996 WILLIAM B MEYERS & ASSOC
100 W KINZIE ST
SUITE 325
CHICAGO, IL 60654

1505 SLAVIN & SLAVIN
MARK F SLAVIN
20 S CLARK ST SUITE 510
CHICAGO, IL 60603

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

14IWCC0487

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

LEROY BOOKER
Employee/Petitioner

Case #11 WC 45452
#11 WC 47249

v.

PACE
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 November 21, 2011. 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?

14IWCC0487

FINDINGS

- On November 7, 2011, and November 11, 2011, the respondent was operating under and subject to the provisions of the Act.
- On those dates, an employee-employer relationship existed between the petitioner and respondent.
- On those dates, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of the accidents was given to the respondent.
- In the year preceding the injuries, the petitioner earned \$42,640.00; the average weekly wage was \$820.00.
- At the time of injuries, the petitioner was 53 years of age, married with no children under 18.
- The parties agreed that the respondent paid \$38,487.38 in temporary total disability benefits.

ORDER:

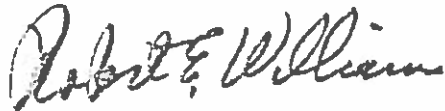
- The respondent shall pay the petitioner the sum of \$492.00/week for a further period of 50 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 10% loss of use of the man as a whole.
- The respondent shall pay the petitioner compensation that has accrued from November 7, 2011, through November 21, 2013, and shall pay the remainder of the award, if any, in weekly payments.
- The medical care rendered the petitioner for his lower back/hip and left and right shoulders were reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given

14IWCC0487

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.



Signature of Arbitrator

December 17, 2013
Date

DEC 18 2013

FINDINGS OF FACTS:

14IWCC0487

The petitioner, a mechanic, injured his right shoulder on November 7, 2011, but did not seek medical care and continued working through November 11th, at which time he sought care at Ingalls Clinic and reported bilateral shoulder and back/hip pain after lifting a brake lathe and axel shaft on the 7th. The petitioner was given restricted duty and medication. Physical therapy was recommended on November 16th and the doctor noted primary complaints of bilateral shoulder, back and left hip pain. The doctor also noted that the petitioner's left shoulder pain was only with lifting and his back pain was more in the left buttock and lateral hip area. The diagnosis was bilateral shoulder pain and left back/hip strain. The petitioner saw Dr. Wolin on November 22nd and reported bilateral shoulder injuries on November 11th. Lumbar spondylosis and arthritic changes in his left hip were noted on x-rays on November 25th. Physical therapy was started at Accelerated Rehabilitation Centers on December 14th. A right CT scan on December 22nd showed no rotator cuff or labral tears. A right shoulder MRI on January 6, 2012, revealed a tiny interstitial tear at the junction of the supraspinatus and infraspinatus tendons at their insertion, a subtle posterior labral tear, a 10 mm ganglion cyst adjacent to the acromioclavicular joint and minimal subacromial/subdeltoid bursitis.

The petitioner continued to follow up at Ingalls Occupational Health and on January 18th, he saw Dr. Ram Aribindi at Southland Orthopedics for his shoulder, who noted mild discomfort on palpation over the anterolateral aspect of his left shoulder and tenderness over the anterior aspect of the glenohumeral joint of his right shoulder. His diagnosis was right superior glenoid labral lesions, bursitis/tendinitis, impingement syndrome and rotator cuff tear, for which he gave the petitioner a steroid injection to the

right subacromial space. The petitioner was discharged from physical therapy for his hip on April 11, 2012. Dr. Aribindi recommended a right shoulder arthroscopy on March 2nd and gave the petitioner a left subacromial injection on April 9th. An MRI on March 27th showed a partial thickness articular surface tear of the supraspinatus tendon, acromioclavicular joint arthropathy and subdeltoid bursal effusion. On August 27th, the petitioner underwent a right shoulder arthroscopy, repair of the labral tear, debridement of tendinosis at the base of the biceps, synovectomy and acromioplasty. The petitioner reported pain relief on September 5th.

The petitioner reported continuing left hip/low back pain at Ingalls Occupational Health on September 12, 2012. An MRI on September 28th showed disc disease and spondylosis causing central canal and neural foraminal stenosis at multiple levels and left foraminal and left lateral disc protrusions at L4-5 and L5-S1. Dr. George Miz examined the petitioner on October 23rd and opined that the petitioner's left lumbar radiculopathy was likely related to his L4-L5 and L5-S1 pathology. On October 29th, physical therapy for the petitioner's lumbar spine was started at Southland Orthopedics. He reported improvement and pain relief with therapy through December 27th. A functional capacity evaluation on February 25th demonstrated the ability to perform 100% of the physical demands of his job. He was released by Dr. Miz to full duty on March 14, 2013.

Prior to the petitioner's current work injury, he received care for lumbar radiculopathy and left hip pain in June 2005. He also had an arthroscopic subacromial decompression and labral debridement of a tear on October 16, 2007, treatment for left shoulder pain in June 2010 and periodic care for continued right shoulder pain. Dr. William Heller opined on August 16, 2013, that the petitioner had a right shoulder

superior labral tear before November 7, 1011, that there was no real injury to his left shoulder and that the petitioner was at MMI by July 9, 2013. Dr. Preston Wolin opined on September 25, 2013, that the petitioner's injury in 2011 was a right shoulder Type II glenoid labrum tear and a left shoulder rotator cuff tear with a possible glenoid labrum tear. Also, he opined that in 2007 the petitioner had a Type I glenoid labrum tear.

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

The medical care rendered the petitioner for his lower back/hip and left and right shoulders was reasonable and necessary.

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 with his lower back/hip and left and right shoulders is causally related to the work injuries. The petitioner aggravated his pre-existing bilateral shoulder condition during his work injuries. It is noted that the parties disagree whether the petitioner's right shoulder glenoid labrum tear is different than the type of glenoid labrum tear he had in 2007. However, the evidence sufficiently establishes that the petitioner was an active full-duty mechanic prior to the work injuries and consistently complained and sought medical care for bilateral shoulder and left back/hip pain after his injuries.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The petitioner returned to his former job as a mechanic. There is no AMA impairment rating or evidence concerning the impact of the petitioner's injury in regard to his occupation, age or future earning capacity, as delineated in Section 8.1(b)(i)

through (iv) of the Act, nor can any effect be inferred from the evidence. Regarding Section 8.1(b)(v), the petitioner complains that he doesn't feel as strong and seeks assistance from his coworkers. His arms become achy and he frequently shakes them out. Joel Carranza testified that the petitioner has never reported any pain or difficulty with his job duties or asked for assistance. Surveillance video on March 22, 2013, shows the petitioner working on a car, pushing up from a lying position and using tools above his body while in a prone position. The treating medical records do not corroborate the petitioner's testimony.

The respondent shall pay the petitioner the sum of \$492.00/week for a further period of 50 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 10% loss of use of the man as a whole.