

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROGER MAY,
Petitioner,

vs.

NO: 07 WC 15818
14 IWCC 0602

GREENWOOD TOWNSHIP,
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 issue of temporary total disability (TTD) and being advised of the facts and applicable 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.

It is well established that the determination of the time for which a petitioner is temporarily totally disabled is a question of fact for the Commission to decide, and, unless that decision is against the manifest weight of the evidence, it will not be disturbed on review. *Lusietto v. Industrial Comm'n* (1988), 174 Ill. App. 3d 121, 528 N.E.2d 18. The period of temporary total disability encompasses the time from which the injury incapacitates the petitioner until such time as the petitioner has recovered as much as the character of the injury will permit, *i.e.*, until the condition has stabilized. *Rambert v. Industrial Comm'n* (1985), 133 Ill. App. 3d 895, 477 N.E.2d 1364. To show temporary total disability, the claimant must show not only that she did not work, but that she was also unable to work. *Rambert*, 133 Ill. App. 3d 895, 477 N.E.2d 1364.

The Commission finds that Roger May failed to prove that he is entitled to TTD from May 18, 2009 through July 19, 2009 and from August 12, 2009 through August 20, 2011. The evidence establishes that the Petitioner was able to perform his job duties as a Highway

Commissioner from the date of accident on April 15, 2006 through May 18, 2009, the date he voluntarily retired from his elected position. His testimony confirmed that no doctor ever informed him that he could not work as the Highway Commissioner or that he could not seek re-election due to his injury. T.59. & T.65. Further, no work restrictions were placed on the Petitioner at the time of his voluntary retirement on May 18, 2009. Dr. Matthew Ross, on July 17, 2008, indicated that Petitioner was fully capable of performing his job duties. T.59. & PX.8.

On July 20, 2009, Dr. Ross performed right cubital tunnel release on Petitioner. The Petitioner was taken off work by Dr. Ross and though he had already retired, he was correctly paid TTD from July 20, 2009 through August 12, 2009. Petitioner testified that he was released back to work with 10 pound restrictions. T.36.

The Commission notes that Petitioner did not offer into evidence any medical record outlining the parameters of the stated 10 pound restriction, or any medical record that indicated Petitioner had a 10 pound restriction following the cubital tunnel surgery and his discharge from care for that procedure. The only evidence regarding a 10 pound restriction is from Petitioner's testimony. Since there is no corroborative evidence, the Commission finds that the Petitioner's self-serving statement is not persuasive.

Petitioner offered no evidence that he presented his restriction (if any existed) to the Respondent or that the Respondent was unable to accommodate the restriction. Further, Mr. May offered no evidence that the restriction precluded him from performing his job duties as the Highway Commissioner. Additionally, Petitioner offered no evidence that he made any effort to seek employment and was denied employment because of his disability during the alleged period of temporary disability. The Petitioner offered no credible excuse for not looking for work within his alleged restriction during the period for which he seeks TTD. See *Lukasik v. Industrial Com. of Illinois*, 124 Ill. App. 3d 609, 465 N.E.2d 528, 1984 Ill. App. LEXIS 1871, 80 Ill. Dec. 416 (Ill. App. Ct. 1st Dist. 1984), which found no basis from the evidence to justify claimant's failure to seek any employment following his release for light work.

The Petitioner argues that he is entitled to TTD from May 18, 2009 through August 20, 2011 as his symptoms on August 20, 2011, the date he was taken off work by Dr. Lawrence Robbins, were the same as they were on May 18, 2009. His argument that this proves an inability to work during the entire period is not persuasive. The Petitioner provided the Commission with no guidance to support such an award. The Commission notes that the record is devoid of any doctor's note, as of May 18, 2009, or thereafter, that provided Petitioner with any work restrictions due to his work-related injury.

Based on the Petitioner's failure to look for work, his failure to provide documentation of any restriction of 10 pounds or otherwise, either to his employer or the Commission, his failure to inform Respondent of his alleged restriction and his failure to provide the Respondent an opportunity to accommodate his alleged restriction with light work, the Commission finds that Mr. May is not entitled to TTD from May 18, 2009 through July 19, 2009 and from August 12, 2009 through August 20, 2011.

With all of the above in mind, the Commission now considers the argument of the

Respondent relative to Petitioner's employment with May Sand and Gravel, Inc. Respondent has alleged that Petitioner was an active employee of May Sand and Gravel, Inc. It has suggested that the Commission reach this same conclusion based upon the location of the business and certain tax returns that were entered into the record. Additionally, Respondent has introduced a copy of an advertisement which listed Petitioner's name as a contact for the company. Both Petitioner and his wife, the majority owner and operator of the company, denied knowledge of the advertisement.

The Commission does not find the argument of the Respondent persuasive. Respondent's argument is based upon speculation and conjecture. Though the Commission is entitled to reach reasonable inferences, it cannot find that Petitioner was employed with May Sand and Gravel, Inc.

The Commission notes that the Respondent stipulated on the record that Mr. May is permanently and totally disabled as the result of his work-related accident. T.68. While the Commission may have a different view as to the extent of the disability, the Commission does not address this issue as the Commission is bound by the stipulation.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 30, 2013, is modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.78 per week for a period of 112-4/7 weeks, from July 20, 2009 through August 11, 2009 and from August 21, 2011 through September 23, 2013, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.78 per week for life, commencing September 24, 2013, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15 after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

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.

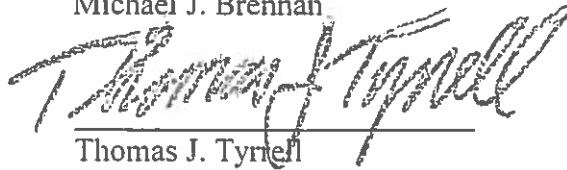
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.



DATED: AUG 13 2014

MJB/tdm
052
O: 6/24/14

Michael J. Brennan



Thomas J. Tyrrell



Kevin W. Lambert

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MAY, ROGER J

Employee/Petitioner

Case# **07WC015818**

GREENWOOD TOWNSHIP

Employer/Respondent

14IWCC0602

On 10/28/2013, 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 0.07% 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:

0247 HANNIGAN & BOTHA LTD
RICHARD D HANNIGAN
505 E HAWLEY ST SUITE 204
MUNDELEIN, IL 60060

2389 GILDEA & COGHLAN
EDWARD A COGHLAN
901 W BURLINGTON SUITE 500
WESTERN SPRINGS, IL 60558

14IWCC0602

STATE OF ILLINOIS)

)SS.

COUNTY OF Lake)

- 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

Roger J. May

Employee/Petitioner

v.

Greenwood Township

Employer/Respondent

Case # **07 WC 15818**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan**, on **9/30/2013**. 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. 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 _____

FINDINGS

On 4/15/2006, 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 \$67,999.88; the average weekly wage was \$1,307.69.

On the date of accident, Petitioner was 66 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$96,145.97 for TTD, \$-0- for TPD, \$-0- for maintenance, and \$-0- for other benefits, for a total credit of \$96,145.97.

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

ORDER

Respondent shall pay petitioner temporary total disability benefits of \$871.78/week for 228 weeks commencing 5/18/2009 through 9/29/2013, as provided in Section 8(b) of the Act.

Respondent shall pay petitioner permanent total disability benefits of \$871.78/week for life, commencing 9/30/2013 as provided in Section 8(f) of the Act.

Commencing on the second July 15 after the entry of this award, petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

Respondent shall pay medical expenses in the amount of \$5,431.01 as outlined in petitioner's exhibit 18

Respondent shall be allowed a credit for any of those bills paid prior to September 30, 2013.

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

10/23/13

 Date

Roger J. May
Employee/Petitioner

Case # **07 WC 15818**

v.

Greenwood Township
Employer/Respondent

14IWC0602

Findings of Fact and Law:

The parties have stipulated that the petitioner was injured on April 15, 2006. While descending a large snowplow on the outside ladder, the petitioner thought he had reached the bottom of the ladder and he released his hands from the ladder not knowing there was one more step. He free fell backwards onto the runner of the vehicle next to the snowplow. He struck his head on the back of the runner forcing his head and chin into his chest, cracking his teeth, fracturing the cervical spine, injuring the right arm and elbow. He was taken to Centegra where CT scan revealed a fracture of the facets at C6 (Px. 2). The petitioner has undergone extensive treatment from the date of the injury up through the date of hearing. The petitioner has worked light duty from the date of the accident through May 18, 2009. On July 17, 2008, there was a Section 12 evaluation with Dr. Matthew Ross. Among the many positive findings the doctor recommended a repeat EMG/NCV. The EMG/NCV was performed September 15, 2008 with numerous positive findings including a right ulnar neuropathy (Px. 8). On February 9, 2009, the petitioner announced to the Township board that he was not going to seek another term as a highway commissioner because of his work injury. In addition to the numerous treating physicians, the respondent tendered Dr. Ross as a treater. The petitioner saw him on June 24, 2009. Dr. Ross indicated that the petitioner would benefit from a right cubital tunnel release. That surgery was performed July 20, 2009. The petitioner was taken totally off work from that date of surgery through August 12, 2009 when Dr. Ross gave him a 10 pound lifting restriction. The Respondent did not begin the payment of temporary total disability benefits until August 22, 2011. On September 3, 2009, Dr. Ross continued the petitioner on his restrictions and referred him back to the anesthesiologist for additional pain diagnostic work-up in an effort to locate and mask or ameliorate the neck pain.

Almost 2 years later the respondent had the petitioner evaluated by Dr. Robbins who is the pain doctor. Prior to that point in time he was referred to Dr. Dano. On March 8, 2010, his chief complaints to Dr. Dano were back pain, dizziness, ear congestion, eye pain, headaches, jaw clicking, jaw joint noises, jaw pain and limited mouth opening and muscle soreness, neck pain, ringing in the ears and shoulder pain. Dr. Dano indicated the petitioner suffered from jaw trauma due to the injury of April 15, 2006. On April 26, 2010 Dr. Dano recommended a mandible orthopedic repositioning device.

The respondent had the petitioner evaluated by Dr. Robbins on August 22, 2011. It should be noted that the petitioner's pain had not changed prior to being seen by Dr. Robbins. However, Dr. Robbins took him off of work on this date and never released him to return to work.

There is no dispute that the petitioner has been totally disabled from work as of August 22, 2011 when he saw Dr. Robbins. The dispute is whether the petitioner is entitled to temporary total disability benefits from May 18, 2009 through August 21, 2011.

Prior to May 18, 2009, the petitioner had been receiving epidural steroid injections in both the lumbar and cervical spine from Dr. Carobene. The petitioner obviously was not at maximum medical improvement on May 18, 2009. On June 24, 2009, Dr. Ross noted the ongoing epidural steroid injections for the cervical spine, the persistent pain in the right upper neck, head and sizzling or throbbing in the head, pain in the right upper back and scapula area, and numbness in the right hand. These are the same symptoms that Dr. Robbins noted on August 22, 2011 and what Dr. Robbins indicated precluded the petitioner from returning to any type of work. It is further noted that Dr. Ross took the petitioner totally off of work on July 20, 2009 when the petitioner had the right cubital tunnel release and did not release him to return to light duty work until August 12, 2009.

Dr. Robbins is currently treating the petitioner with trigger point injections which do, in fact, provide the petitioner with relief. On September 4, 2013, Dr. Robbins had the petitioner continued off work. This treatment is to alleviate the petitioner's occipital neuralgia.

Interstate Scaffolding v. Illinois Worker's Compensation Commission 236 Ill2d 132, 923 N.E.2d 266 (2010) indicates that a petitioner is entitled to temporary total disability benefits up until the point where he reaches maximum medical improvement. Based upon the treatment that the petitioner has had beginning May 18, 2009, it is the finding of the arbitrator that the petitioner had not reached maximum medical improvement and therefore it is the finding of the arbitrator that the petitioner is entitled to temporary and totally disabled from May 18, 2009 through the date of hearing of September 23, 2013.

It is the finding of the arbitrator that the petitioner's treatment has rendered by Dr. Robbins is necessary, reasonable and related to relieve the petitioner's condition of ill being.

It is the finding of the arbitrator that the petitioner has reached maximum medical improvement as of the date of September 30, 2013 and as of this date is permanently and totally disabled pursuant to Section 8(f) of the Act.

Respondent shall pay medical expenses in the amount of \$5,431.01 as outlined in petitioner's exhibit 18. Respondent shall be allowed a credit for any of those bills paid prior to September 30, 2013.

Commencing on the second July 15 after the entry of this award, the petitioner may become eligible for cost of living adjustments paid by the Rate Adjustment Fund as provided in Section 8(g) of the Act.

Arbitrator Edward Lee

Date